

United States 1107  
Circuit Court of Appeals  
For the Ninth Circuit.

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MUTUAL OIL COMPANY, a Corporation,  
Appellant,  
vs.  
H. G. HILLS,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
District of Montana.

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Filed

JUL 6 - 1917

F. D. Monckton,  
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Solicitors of Record.**

FLETCHER MADDOX, Esq., of Great Falls, Montana, I. W. CHURCH, Esq., of Great Falls, Montana, and S. D. BISHOP, Esq., of Lawrence, Kansas,

Solicitors for Defendant and Appellant.

Messrs. FREEMAN & THELEN, of Great Falls, Montana, Messrs. NORRIS & HURD, of Great Falls, Montana,

Solicitors for Plaintiff and Appellee. [1\*]

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*In the District Court of the United States in and for  
the District of Montana.*

IN EQUITY—No. 43.

H. G. HILLS,

Plaintiff,

vs.

MUTUAL OIL COMPANY, a Corporation,

Defendant.

BE IT REMEMBERED, that on April 21, 1915, the plaintiff filed his amended complaint herein, in the words and figures following, to wit: [2]

*In the District Court of the United States in and for  
the District of Montana.*

H. G. HILLS,

Plaintiff,

versus

MUTUAL OIL COMPANY, a Corporation,

Defendant.

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\*Page-number appearing at foot of page of original certified Transcript of Record.

**Amended Complaint.**

Now comes the above-named plaintiff, leave of Court having first been obtained therefor and files this, his amended complaint, and dismissing from said cause the defendant, J. R. Greenlees, mentioned in plaintiff's original complaint and for plaintiff's cause of action against the defendant, Mutual Oil Company, alleges:

**I.**

That the defendant, Mutual Oil Company, during all the times hereinafter mentioned has been and now is a corporation duly organized and existing under and by virtue of the laws of Arizona for the purpose, among others, of marketing kerosene, gasoline, oil and other products of petroleum, and at all times since on or about the first day of January, 1910, has been and now is carrying on said business in the State of Montana and that at all the times herein mentioned the principal place of business of said defendant has been and now is at the City of Lawrence in the State of Kansas.

**II.**

That in the month of December, 1909, the said defendant, which had not theretofore been engaged in said business in Montana, began to make arrangements to market kerosene, [3] gasoline, oil and other products of petroleum in said State; that at all times mentioned herein prior to the commencement of this action, one J. R. Greenlees was the president of the defendant; that said defendant, prior

to the eighteenth day of December, 1909, authorized said J. R. Greenlees to make all arrangements and preparations necessary to enable said defendant to engage in the business of marketing kerosene, gasoline, oil and other products of petroleum in the State of Montana and entrusted to said J. R. Greenlees the entire supervision, management and control thereof.

### III.

That the plaintiff for more than twenty years previous to the 18th day of December, 1909, had been in the employ of the Continental Oil Company in various capacities and was on the last-mentioned date, the manager of the said company at Great Falls, Montana, and was thoroughly acquainted with all phases of said business and particularly the selling and marketing part thereof, and that said plaintiff enjoyed the confidence of his said employer and was in line of promotion to the position of State manager thereof in and for the State of Montana; that on and before the said 18th day of December, 1909, the said defendant was well aware of plaintiff's ability to handle the oil business and knew of his long years of connection with the Continental Oil Company as an employee and of his standing with the said company.

### IV.

That on or about said 18th day of December, 1909, and as a part of its arrangement and preparation to engage in said business, the said J. R. Greenlees acting for said defendant sought out this plaintiff

at Great Falls, Montana, and entered into negotiations with him for the purpose of inducing him to terminate his relations with the said Continental [4] Oil Company at Great Falls, Montana and to assume charge of the said business of the defendant in that part of Montana hereinafter described as the Great Falls District, and it was represented by said Greenlees to plaintiff that its district managers must be and become holders of its capital stock; that said negotiations between the plaintiff and the defendant as aforesaid, resulted in the making and entering into of an agreement, a partial memorandum of which, marked Exhibit "A," and by this reference made a part hereof is hereto attached, under and by the terms of which said agreement, it was stipulated and agreed by and between the plaintiff and the defendant, that the said plaintiff was employed by said defendant as manager of the business of said defendant in the Great Falls District hereinafter described, for such period of time as said plaintiff should be in good health and be able to give his attention to the management, supervision and control of said defendant's business in such district and that as compensation therefor, said defendant agreed to pay to the plaintiff the sum of one hundred twenty (120) dollars per month, payable monthly and the sum of five per cent of the net earnings of the business done by said defendant in such district and it was further agreed and stipulated by and between the plaintiff and the defendant that the plaintiff should purchase of and from the defendant and plaintiff did purchase of said defendant, thirty

shares of the capital stock of defendant, for the sum of one hundred (100) dollars per share and that said plaintiff should and he did make, execute and deliver to the defendant, his promissory note for the sum of three thousand (3,000) dollars, payable on or about July 1st, 1911, in payment for thirty (30) shares of the capital stock of said defendant, the certificates for which were to be issued by the defendant and delivered to [5] the plaintiff whenever said note was paid and it was agreed and stipulated by and between the plaintiff and the defendant, that the defendant should apply in payment of said note, all dividends which said thirty shares of said stock might or should earn after the 18th day of December, 1909, and the said five per cent of the net earnings of the business done by said defendant in the Great Falls District, which application of said sum should continue to be made in payment of said note until said note was fully paid and that in the event said note was not paid by the application of said monies thereupon prior to the maturity thereof, then a renewal note for whatever sum remained owing to said defendant should be made, executed and delivered by said plaintiff and that after said note or renewal note was so paid the dividends, which said thirty shares of said stock might thereafter earn and the said five per cent of the net earnings of the business done by defendant in said district, should be delivered and paid by the defendant to the plaintiff.

## V.

That the said Great Falls District so designated

by said defendant, included all stations, towns and cities and the territory tributary thereto along the lines of the Great Northern Railway Company between the North Dakota-Montana State line and the Montana-Idaho State line and between and including the city of Havre and the town of Wolf Creek and between and including the towns of Judith Gap and Shelby and between and including the towns of Armington and Neihart, all of said points being on the main or branch lines of the Great Northern Railway Company in the State of Montana.

#### VI.

That on or about the 19th day of January, 1910, the plaintiff entered upon and commenced to discharge the duties [6] as manager of said defendant in said district and continued as such manager and thereafter performed all the duties of his said position until on or about the first day of March, 1913, on which said date, the defendant, without any cause, reason or excuse whatsoever, discharged the plaintiff as its manager and has at all times since refused to employ him as such manager.

#### VII.

That upon his information and belief the plaintiff alleges, that since the 19th day of January, 1910, five per cent of the net earnings of the defendant upon business done by it in the said Great Falls District, has been at least three thousand (3,000) dollars per year and that in the future and during the time said plaintiff may reasonably expect to be able to give attention to said defendant as its manager in said district, to wit, for the period of at least fifteen years

from and after the date of the commencement of this action, the plaintiff, upon his information and belief, alleges that five per cent of the net earnings of said defendant in said district will be the sum of at least five thousand (5,000) dollars per year.

#### VIII.

That upon his information and belief, the plaintiff alleges, that since the first day of January, 1910, the dividends which the stock of said defendant has earned has been not less than one hundred per cent or the sum of one hundred (100) dollars per share, and that the market value of said stock of the defendant at the time of the commencement of this action is not less than two hundred (200) dollars per share.  
[7]

#### IX.

That on or about the 11th day of July, 1911, the defendant required of the plaintiff that the plaintiff execute and deliver to the defendant, plaintiff's promissory note in the sum of three thousand (3,000) dollars, payable eighteen months after the date thereof as and for a renewal of the first note hereinbefore mentioned, and said plaintiff did, on or about said date, make and execute and thereafter deliver to the defendant such promissory note.

#### X.

That upon his information and belief, said plaintiff alleges that since the first day of January, 1910, the dividend earned by said thirty shares of stock and five per cent of the net earnings of the defendant in said Great Falls District have been greatly in excess of the sum of three thousand (3,000) dollars, the

sum owing the defendant by the plaintiff upon the aforesaid promissory note, and that long prior to the commencement of this action, said note by the method aforesaid, was fully paid, satisfied and discharged and that said defendant should have canceled said note and the renewal note thereof and returned the same to the plaintiff and should have issued to the plaintiff certificate for thirty shares of the capital stock of said defendant and thereafter should have paid to the plaintiff large sums of money as dividends upon said stock and large sums of money representing the five per cent of the net earnings upon business done by the defendant in said Great Falls District, but said defendant has at all times refused and now refuses to cancel and surrender to said plaintiff said note and renewal note or to deliver to said plaintiff certificates for said thirty shares of stock or to account for and pay to said plaintiff dividends earned upon said stock or five per cent of the net [8] earnings of business done by the defendant in said Great Falls District.

## XI.

That heretofore the business of said defendant has rapidly increased from year to year and upon his information and belief, plaintiff alleges that it will rapidly increase from year to year in the future and that the stock of said defendant will earn large dividends, the exact amount of which cannot by the plaintiff be estimated and the stock of said defendant by reason thereof will greatly and rapidly increase in value; that there is only a limited amount of said stock issued by said company and that it is not for



sale upon the market and cannot rapidly be purchased and that said thirty shares of stock herein mentioned are now of a special and peculiar value and that it is impossible to determine the actual damage which plaintiff will sustain if said stock is not by the defendant delivered to him, and upon his information and belief plaintiff alleges that defendant has sufficient capital stock to carry out the agreement and to deliver to him thirty shares thereof and said plaintiffs ask for a specific performance of said agreement as to said stock.

## XII.

That plaintiff has no means of ascertaining the net earnings of said defendant upon business done by it in said Great Falls District prior to the commencement of this action or at any time; that prior to the commencement of this action plaintiff demanded of the defendant that said defendant account to and with the plaintiff for five per cent of the net earnings of the business done by said defendant in said district; that plaintiff has demanded of defendant all dividends earned by said thirty shares of stock and an accounting by the defendant to and with the plaintiff for said dividends; [9] that said defendant has at all times declined, failed and refused and now declines, fails and refuses to account to and with the plaintiff for five per cent of said net earnings or any part thereof and said dividends or any part thereof in payment of said note and said renewal note.

## XIII.

That said plaintiff has duly performed all the terms and conditions of said agreement to be by him per-

formed and has at all times been and now is able and willing to perform all of the terms and conditions of said agreement on his part to be performed after the first day of March, 1913, and at all times in the future.

## XIV.

That if the five per cent of the net earnings of business done by said defendant in said Great Falls District, together with the accruing dividends on said stock is not sufficient to pay to the defendant, the amount due on said thirty shares of stock, said plaintiff is ready, willing and able and hereby offers to pay the difference in money.

## XV.

That during the months of July to December, both inclusive, in the year 1911, said defendant without any authority so to do and in violation of said agreement, withheld from plaintiff the sum of twenty (20) dollars per month out of the sum of one hundred twenty (120) dollars per month, which said defendant agreed to pay said plaintiff as a part of said plaintiff's compensation for services rendered said defendant as manager of its said Great Falls District, which sum plaintiff demanded of defendant and defendant has at all times refused to pay to said plaintiff the said sum of twenty (20) dollars each for said months amounting to the sum of one hundred twenty (120) dollars, which is now due, owing and [10] unpaid by and from the defendant to the plaintiff.

WHEREFORE, the plaintiff demands judgment against the defendant,—

## I.

That said defendant be required to transfer to the plaintiff thirty shares of the capital stock of the Mutual Oil Company and if for any reason said specific performance of said agreement cannot be had, then that the plaintiff have judgment for the value thereof, together with damages assessed thereon at three times the value of said stock for wilful failure to perform the terms of said contract.

## II.

That the defendant be required to account to the plaintiff for five per cent of the net earnings of business done by said defendant in said Great Falls District from the 19th day of January, 1910, to the date of the trial of this action and to pay to the plaintiff any sum found due him after said accounting has been had.

## III.

That the defendant be required to account to and with the plaintiff for all dividends earned by thirty shares of said stock and that said amount be applied in payment of said plaintiff's note or if the amount thereof be not sufficient to pay said note, that defendant be required to accept from the plaintiff the balance found to be due and owing from said plaintiff to the defendant for said shares of stock.

## IV.

That if the sums found to be due to the plaintiff as dividends upon said stock and five per cent of the net earnings of business done by the defendant in said Great Falls District are in excess of the amount due upon said promissory notes executed by the plaintiff

and delivered to the defendant [11] that said defendant be required to deliver up and surrender to the plaintiff, duly canceled, said note and said renewal note.

## V.

For the sum of one hundred twenty (120) dollars with interest thereon at the rate of eight per cent per annum.

## VI.

For such other and further relief as to the court may seem equitable, meet, just and proper, including plaintiff's costs and disbursements incurred in and by reason of this action.

FREEMAN & THELEN and  
NORRIS & HURD,

Solicitors for the Plaintiff. [12]

State of Montana,  
County of Cascade,—ss.

H. G. Hills, first being duly sworn, deposes and says: That he is the plaintiff in the foregoing entitled action; that he has read the foregoing amended complaint, knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated upon his information and belief and as to those he believes it to be true.

H. G. HILLS.

Subscribed and sworn to before me this 20th day of April, 1915.

[Notarial Seal]

EDWIN L. NORRIS,

Notary Public for the State of Montana, Residing at  
Great Falls, Montana.

My commission expires Oct. 6, 1916.

Service of the foregoing complaint by receipt of a copy thereof is hereby admitted this 20th day of April, 1915.

S. D. BISHOP,  
FLETCHER MADDOX,  
I. W. CHURCH,

Attorneys for Defendant. [13]

**Exhibit "A" Attached to Amended Complaint—  
Agreement Dated 12-18, 1909, Between H. G.  
Hills and Mutual Oil Co.**

Gt. Falls, Mont., 12-18, 1909.

Whereas I have this day executed a note to the Mutual Oil Co. of Lawrence, Kansas, for \$3,000.00, same being given for 30 shares of \$100.00 each of the common stock of the Mutual Oil Co. It is hereby agreed that the dividends accruing on this stock together with my share of the net earnings of the Gt. Falls district, same being 5 per cent as set out in one certain contract shall be applied on said note until same is fully paid. The above shares of stock to be then delivered to me together with the canceled note by the Mutual Oil Co. Should this note not be fully paid in this manner when due it is agreed that a new note for the balance then due shall be executed to be held in the same manner until fully paid. The old note to be cancelled and returned.

H. G. HILLS.

MUTUAL OIL CO.

By J. R. GREENLEES, Pt.

[Endorsed]: Filed April 21, 1915. Geo. W. Sproule, Clerk of U. S. Dist. Ct. [14]

Thereafter, on June 4, 1915, Answer to Amended Complaint was duly filed herein, in the words and figures following, to wit: [15]

[Title of Court and Cause.]

**Answer to Amended Complaint.**

Answer of the defendant Mutual Oil Company, a corporation, to the plaintiff's amended bill of complaint herein.

This defendant reserving the benefits of all exceptions that may be taken to the insufficiency of the plaintiff's said bill of amended complaint, answering says:

1. That it admits the averments in said bill of complaint set forth in paragraph 1 thereof.

2. That it admits that in the month of December, 1909, it began to make arrangements to market kerosene, gasoline, oil and other products of petroleum, in the State of Montana, but denies that at all times prior to the commencement of this action one J. R. Greenlees was the president of the defendant company, but avers the truth to be that the said J. R. Greenlees ceased to be the president of the said defendant company in the year 1914 and long prior to the filing of plaintiff's original bill of complaint. And further denies that prior to the 18th day of December, 1909, or ever or at all, it authorized the said J. R. Greenlees to make all or any arrangements or preparations necessary to enable it to engage in its said business in the State of Montana, as alleged, or that it entrusted to the said Greenlees the entire, or any,

supervision, management, or control of such arrangements or preparations as alleged by the plaintiff.

3. That it admits that prior to the month of December, [16] 1909, the plaintiff had been for many years in the employ of the Continental Oil Company, but as to all other matters alleged in paragraph 3 of plaintiff's complaint defendant says that it has no knowledge thereof.

4. That it admits that on or about the 18th day of December, 1909, the said Greenlees met the plaintiff at Great Falls, Montana, and employed him in the capacity of a manager of the business of the defendant company, in what was described in the plaintiff's complaint as the Great Falls District, at a salary of \$120 per month, but defendant says that in so doing the said Greenlees acted upon his own responsibility and without previous sanction or authority on the part of the defendant company. And defendant further says that the said salary of \$120 a month was the only consideration offered by the said Greenlees to the plaintiff as an inducement for him to terminate his relations with the said Continental Oil Company and that the said plaintiff was at all said times ready and willing in consideration of the said salary to terminate his employment with the Continental Oil Company in the hope and expectation of securing in due time, as his services might warrant or justify, promotion in the service of the defendant company which had been withheld and denied to him by the said Continental Oil Company. That as to the truth of the averment that it was represented by the said Greenlees to plaintiff that its district

managers must be and become holders of its capital stock said defendant has no knowledge, but says that if any such representation was made it was untrue and unauthorized by the defendant. Defendant further says that plaintiff entered its employ on or about the 19th day of January, 1910, as its local manager and as such had charge of defendant's business in the city of Great Falls until some time during the month of February, 1913, at which time the plaintiff was discharged by this defendant as its resident agent and [17] manager at Great Falls and was thereafter employed by this defendant as a clerk in its office at said city at a salary of \$100 a month until the filing of this action, at which time plaintiff was discharged.

5. That it denies that on or about the 18th day of December, 1909, or ever or at all, any negotiations were had between the plaintiff and defendant that resulted in the making or entering into of an agreement of which the said Exhibit "A" referred to in paragraph 4 of plaintiff's complaint was a partial or any memorandum whatever; or that any agreement, in writing or otherwise, was ever entered into between the plaintiff and defendant under or by the terms of which it was stipulated or agreed that the plaintiff was employed by the defendant as manager of the business of the defendant in said Great Falls district for such period of time as plaintiff should be in good health or able to give his attention to the management, supervision or control of defendant's business in such district, or for any other specified or designated period of time whatsoever. Denies



that as compensation for such alleged employment the defendant agreed to pay the plaintiff the sum of \$120 per month and the sum of 5, or any, per cent of the net, or any, earnings of the business done by the defendant in said Great Falls District. Denies that it was ever agreed or stipulated by and between the plaintiff and the defendant that the plaintiff should purchase of or from the defendant, or that the plaintiff did purchase of the defendant 30, or any, shares of the capital stock of the defendant for the sum of \$100 per share, or any other sum, or that the plaintiff should, or that he did make, execute or deliver to the defendant, his promissory note for the sum of \$3,000, payable on or about July 1st, 1911, or any note whatever in payment for 30, or any, shares of the capital stock of this defendant. Or that the certificates for said alleged [18] shares of stock were to be issued by the defendant or delivered to the plaintiff whenever said note was paid, or ever, or at all. Denies that it was agreed or stipulated by and between the plaintiff and the defendant that the defendant should apply in payment of said alleged note, all or any, dividends which said 30, or any, shares of said stock might, or should earn after the 18th day of December, 1909, or from any other date or at all, or the said alleged 5 per cent of the net earnings of the business done by said defendant in the said Great Falls district. Denies that the application of said alleged, or any sums whatever should continue to be made upon said alleged note until the same was fully paid, or that in the event said alleged note was not paid by the application of said moneys prior to the

maturity thereof that a renewal note should be made for any sum remaining due. Or after said alleged note or renewal note was so paid the dividends which said 30, or any, shares of said stock might thereafter earn, or the said alleged 5 per cent of the net earnings of the business done by defendant in said Great Falls district should be delivered or paid by the defendant to the plaintiff.

6. That it denies that it ever made or executed the writing or memorandum marked Exhibit "A," and attached to plaintiff's complaint, or that it ever authorized its president, J. R. Greenlees, to execute said writing, or that it ever ratified, confirmed, or approved the act of said Greenlees in assuming to execute said writing on behalf of the defendant, but on the contrary, alleges the truth to be that the said Greenlees executed said writing upon his own responsibility and without previous authority from the defendant or its board of directors. And the defendant further shows to this Honorable Court, and alleges the fact to be that the management and control of the business of the defendant, and the power to transact the same is vested in its [19] board of directors, and that the defendant, by its board of directors, never authorized, ratified, or confirmed the employment of the plaintiff upon the terms, or any of the terms, set forth in said Exhibit "A," and that said board of directors never authorized, ratified, or confirmed the execution of the alleged memorandum Exhibit "A" in any manner whatever, and had no knowledge of the execution of the same until a long time thereafter, and that when defendant did

learn of the existence of said pretended contract, and that plaintiff pretended to claim rights thereunder, it promptly notified plaintiff of its repudiation and nonratification of the same.

7. Further answering the defendant alleges upon information and belief that the plaintiff, at the time of the execution of said writing marked Exhibit "A" by said J. R. Greenlees, was fully informed by him that said writing was executed without authority of the board of directors of the defendant, and that the same before it would have any legal or binding effect would have to be ratified, and confirmed by the said board of directors. And defendant further shows to this Honorable Court, and avers the truth to be that it was fully understood and agreed between plaintiff and the said J. R. Greenlees that the writing, Exhibit "A," was to be regarded as a temporary and informal memorandum and that its terms were to be embodied in a formal contract setting out more fully and in legal form the proposed arrangement under which the plaintiff should enter the employment of the defendant. That immediately thereafter such formal contract was drawn up, but the same was not executed, or attempted to be executed by the said Greenlees in behalf of the defendant, but the same was forwarded to the defendant at its home office, in Lawrence, Kansas, for the consideration and approval of the board of directors, and for execution, if so approved. That the necessity of such approval, or ratification by [20] the said board of directors of the defendant was one of the reasons why said writing Exhibit "A" was not regarded by plaintiff

and said Greenlees as a final agreement covering the proposed contract of employment, but it was well understood that the second and formal contract was to be drawn up, not alone for the purpose of having the same in legal form, but to give the board of directors of the defendant an opportunity to consider said contract, and approve it, and authorize its execution, should they so decide to do, all of which plaintiff well knew and understood. That the defendant did not approve, execute or ratify, in any manner, said second proposed contract. And defendant further alleges that the plaintiff entered the employ of the defendant on or about the 19th day of January, 1910, one month after said second proposed contract had been forwarded to the defendant's office at Lawrence, Kansas, well knowing at the time that said contract had not been approved, or its execution authorized by the defendant's board of directors, and well knowing that ample time had elapsed for action on the part of said board of directors in respect to said proposed contract.

8. That it admits that the plaintiff entered the employ of the defendant company on the 19th day of January, 1910, and rendered services as its manager in said Great Falls district until about the 1st day of March, 1913, when he was discharged. Denies that plaintiff was discharged without cause, reason or excuse as alleged in paragraph 6 of plaintiff's complaint, but on the contrary, alleges that plaintiff was discharged because of his incompetency and inability to properly or satisfactorily perform the duties of his employment.

9. Defendant says that if the plaintiff executed and delivered to the defendant his promissory note for \$3,000 as alleged in paragraph 4 of his complaint, or if he executed and delivered to the defendant his renewal note for \$3,000 as [21] alleged in paragraph 9 of his complaint, that the execution and delivery of said note, or either of them, were without the knowledge, consent or authority of the board of directors of this defendant, and that this defendant has not, in any manner, ratified or confirmed the execution of said note to it on the part of said plaintiff, or ratified or confirmed, in any manner, the renewal of said note. And further alleges the fact to be that this defendant or its board of directors have never authorized any of its officers to receive in payment for its stock, the aforesaid note, and has never authorized any of its officers to obtain a renewal of said note, and if such were done, the same was done without the knowledge or consent of this defendant, or of its board of directors. And this defendant says that if said notes are now in the possession of, or under the control of this defendant, or of its board of directors, or any of its officers, agents or employees, it now offers to return said notes to the plaintiff or to bring said notes into court for such disposition of same as this Honorable Court may direct.

## SECOND.

Further answering and for a second defense defendant alleges and shows unto this Honorable Court: That the contract set out in plaintiff's complaint wherein the defendant is alleged to have

agreed to permit the plaintiff to become the owner of 30 shares of the capital stock of the defendant by an arrangement whereby the stock was to automatically pay for itself with its own dividends is illegal and void and beyond the power of the defendant, or its board of directors, or any of its officers, to make or enter into, in that the arrangement alleged to have been so entered into was, in effect, a gift of such stock to the plaintiff, and as such, a fraud upon the rights of all other stockholders and in violation of law and the by-laws of the defendant [22] company.

That the contract set out in plaintiff's complaint wherein the defendant is alleged to have agreed to pay the plaintiff five per cent of the net earnings of the business done by the defendant in said Great Falls district for an indefinite period, or as long as plaintiff remained in good health and able to give his attention to the management of defendant's business, was illegal and void in law and beyond the power of the defendant, or its board of directors, or any of its officers to make or enter into, in that it proposed to divert and withhold from the treasury of the company a part of its assets or income without the knowledge or consent of the stockholders of the defendant company. That the payment or said 5 per cent of said net earnings would constitute a fraud upon the stockholders of the defendant company. That said agreement so alleged to have been made between the plaintiff and the said J. R. Greenlees, assuming to act for the defendant company as to the purchase of the 30 shares of stock and the 5 per cent

of the net earnings of said district was a proposed diversion and misuse of the capital stock and assets of the defendant not authorized by law and was without the authority, knowledge or consent of the board of directors of the defendant company and beyond their power to ratify or confirm, and when said pretended and proposed agreement was brought to the attention of the board of directors of the defendant it refused to confirm or ratify the same and promptly notified the plaintiff of its repudiation and non-ratification thereof.

### THIRD.

Further answering and for a counterclaim against the plaintiff this defendant alleges:

That the services of said plaintiff as its resident agent and manager at Great Falls, Montana, were not satisfactory to defendant and that said plaintiff was grossly incompetent in [23] transacting the business of said defendant at Great Falls, Montana, and was guilty of a culpable degree of negligence in this, to wit: That from the beginning of his employment, the plaintiff disregarded defendant's instructions relative to making purchases in equipping stations and purchased equipment at higher prices, when he was advised that said equipment and material could be purchased at lower prices elsewhere.

That plaintiff was in the habit of making a large number of drafts upon the defendant and gave no accounting or furnished no vouchers showing the disposition of the funds derived therefrom, for months thereafter. That defendant, at one time, received a large number of invoices covering a large number of

purchases with no list or statement covering said bills. That after said bills were listed, the account showed that about \$600.00 had been sent to plaintiff for which he could not account by voucher or money on hand. That this defendant was obliged to hold up plaintiff's salary until this amount had been made good out of the same. That at the very beginning, the plaintiff handled and managed the defendant's business in a very loose and unbusinesslike manner; that he was not willing to make a record of any kind showing the transactions or the business of defendant or make proper reports thereof, and that the plaintiff would order an unreasonable quantity of goods, which said orders, had the defendant honored, would have stocked the defendant in such quantities that a large amount of goods would have remained on hand and unsold in the possession of the defendant. That the plaintiff represented to the defendant that practically all of the business would be done on a cash basis in the Great Falls District, but after the defendant had equipped its stations and stocked and prepared to do business, and had gone to great expense in the matter, then the plaintiff advised the defendant that it would be necessary to extend credit with the result that practically all of the defendant's [24] goods were sold on a long time credit; that poor judgment was exercised by the plaintiff in extending said credit in spite of repeated caution to the effect that credit should only be extended on accounts that were absolutely good. That plaintiff paid no heed to the



instructions of the defendant, and a large amount of money was lost through the failure and negligence of the plaintiff herein in giving and granting to customers who could not meet their bills when due or at any time thereafter. That the amount of poor uncollectible bills made through the negligence of the plaintiff herein which have been charged off by the defendant amount to approximately \$17,500.00; that in many cases, the plaintiff was advised not to extend credit to those customers as the investigation of the defendant showed that they were not entitled to credit. That the plaintiff negligently and carelessly paid no attention whatever to the instructions of the defendant and in some cases credit was extended to the extent of \$500.00 or \$600.00, which amounts were lost, and had to be charged off as bad accounts. That by reason of the negligent acts above alleged, and the plaintiff's willful disregard of this defendant's instructions, it was obliged to relieve and discharge said plaintiff as its resident agent and manager as herein before alleged. That by reason of the carelessness of said plaintiff as herein alleged, his willful disregard of defendant's instructions and his incompetency to transact defendant's business, this defendant sustained a loss in the sum of about \$17,500.00.

This defendant, therefore, prays that it have judgment against said plaintiff for costs and for such

sum and for such other relief, legal or equitable, as this Court may deem just.

FLETCHER MADDOX,  
S. P. BISHOP and  
I. W. CHURCH,

Solicitors for Defendant, the Mutual Oil Company.

[25]

State of Montana,  
County of Cascade.

I. W. Church, being first duly sworn, deposes and says: That he is one of the solicitors for the defendant Mutual Oil Company. That the said defendant is a corporation and there is no officer of said corporation now within the County of Cascade where affiant resides, and that the matters stated in the foregoing answer are true to the best knowledge, information and belief of affiant.

I. W. CHURCH.

Subscribed and sworn to before me this 2d day of June, 1915.

[Notarial Seal] ALBERT W. HEIDEL,

Notary Public in and for Cascade County, State of Montana.

Notary Public for the State of Montana, Residing at Great Falls, Montana.

My Commission expires Jan. 19, 1918.

Service of copy of foregoing answer admitted this 3 day of June, 1915.

FREEMAN & THELEN and  
NORRIS & HURD,

Solicitors for Plaintiff.

[Endorsed]: Filed June 4, 1915. Geo. W. Sproule,  
Clerk. [26]

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Thereafter, on July 1, 1915, reply was duly filed  
herein, in the words and figures following, to wit:  
[27]

[Title of Court and Cause.]

**Reply of Plaintiff to Answer of Defendant to  
Amended Complaint of Plaintiff.**

Comes now the plaintiff and for reply to the answer of defendant to the amended complaint of the plaintiff herein, admits, denies and alleges, as follows:

I.

For reply to paragraph 7 of the first defense of defendant set forth in its answer, the plaintiff admits that the writing set forth in the amended complaint of plaintiff and marked Exhibit "A," was to be regarded as a temporary and informal memorandum and that the terms of said writing were to be embodied in a formal contract setting out more fully and in regular form the arrangements made and contract entered into between the plaintiff and the defendant herein as set forth in said paragraph 7, and denies each and every other allegation, fact, matter and thing contained in said paragraph.

II.

For answer to paragraph 8 of the first defense contained in said answer, the plaintiff denies that he was discharged by the defendant herein from the employment of said defendant by reason or because

of his incompetency and inability to properly or satisfactorily perform the duties of his employment [28] or that he was discharged by reason of any incompetency or inability on his part and alleges that said discharge was not by reason or any cause over which he had any control.

### III.

That plaintiff replying to paragraph 9 of the first defense contained in said answer denies each and every allegation, fact, matter and thing set forth therein.

### IV.

The plaintiff replying to the second defense set forth in the answer of defendant, designated as paragraph second, denies each and every allegation, fact, matter and thing set forth in said defense.

### V.

The plaintiff replying to the further answer and counterclaim of the defendant, set forth in its said answer and designated therein as paragraph Third, denies each and every allegation, fact, matter and thing therein contained.

WHEREFORE, having replied to the answer of said defendant, the plaintiff prays as in his complaint set forth.

FREEMAN & THELEN,  
NORRIS & HURD,

Attorneys and Solicitors for Plaintiff. [29]

State of Montana,  
County of Cascade,—ss.

H. G. Hills, being first duly sworn, deposes and says: That he is the plaintiff named in and who

makes the foregoing reply; that he has read the said reply and knows the contents thereof and that the same is true of his own knowledge.

H. G. HILLS.

Subscribed and sworn to before me this the 29th day of June, 1915.

[Notarial Seal]

H. C. HALL,

Notary Public for the State of Montana, Residing at Great Falls, Montana.

My Commission expires Nov. 14, 1917.

Service of a copy of the foregoing reply is admitted this the 30th day of June, 1915.

S. D. BISHOP,

I. W. CHURCH and

FLETCHER MADDOX,

Solicitors for Defendant.

[Endorsed]: Filed July 1, 1915. Geo. W. Sproule, Clerk. [30]

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That on January 13, 1917, the opinion of the Court was duly filed herein, in the words and figures following, to wit: [31]

*United States District Court, Montana.*

No. 43.

H. G. HILLS,

vs.

MUTUAL OIL CO.

**Opinion.**

This suit is for specific performance of a contract for the sale of corporate stock (part of an employ-

ment contract), and for accounting and other incidental relief.

The complaint alleges facts sufficient to invoke equity jurisdiction to that end, and there is no denial in the answer. From the evidence it is found that on Dec. 18, 1909, plaintiff and defendant, an Arizona corporation of that year, entered into a contract that plaintiff would become local manager for defendant, to establish, build and conduct local stations at Great Falls and elsewhere in Montana, for the sale and distribution of oil, so long as he was in good health and attentive to business, for compensation of \$120 per month and 5% of the net earnings of the managed territory; and also that plaintiff would buy of defendant thirty shares of its common stock, giving therefor his note for \$3,000 to be paid by application of dividends accruing and said 5%. There is conflict here, plaintiff testifying the contract was so made; Greenlees, defendant's *de facto* president, who conducted the negotiations with plaintiff, that it was contingent on approval by defendant's directors. In view of all the circumstances, which version is true, is not very material for by estoppel and ratification, conduct served equally as would have the board's express approval. However, circumstances sustain plaintiff.

Defendant had no directors until June, 1910. Before that, Greenlees had promoted defendant, was its "moving spirit" and "practical head," assumed to be president, made his office its office, alone transacted all its business in establishing it as he did [32] as a going concern, alone was actively engaged

therein, sustained it with his money and credit, borrowed money on its credit supported by his personal endorsement of its notes by him executed and its collateral by him pledged, and in all things did all the corporation could do. Of force and ability, Greenlees neither was offered nor received directions from anyone. He made all defendant's contracts and submitted them to no one. And his co-incorporations knew and acquiesced in all this. He was the corporation. His co-incorporators, as they individually chanced to meet him, may have inquired of progress and received some general information, but that is all.

The attempt to cloak Williams, hired by Greenlees as secretary for defendant, with superior or any material authority, fails. Furthermore, the parties intended the contract to take immediate effect. Plaintiff's note was delivered Dec. 18, 1909, to Greenlees for defendant, and plaintiff actively entered on the service about Jan. 19, 1910, and continued therein some three years without any action by the directors. That contemporaneous with the negotiations part of the contract was dictated to an attorney and later reduced to writing by him, and by plaintiff, after entering on the service, received and transmitted to Greenlees with leave to redraft to the latter's satisfaction, is comparatively unimportant. Nor was reduction to writing a condition precedent, but if it was, it was waived and performance entered upon. And altho the incorporators, and directors later, knew Greenlees had "made some arrangement" with plaintiff, altho plaintiff's note

was pledged by Greenlees for defendant prior to creation of the board and renewed and later by defendant repledged, altho in March, 1910, plaintiff's application for a fidelity bond, containing enough to apprise of the "arrangement" went thru defendant's office and was signed by its secretary, altho the attorney's draft sent to Greenlees became known to defendant's secretary and directors, and altho plaintiff continued service, the directors with express or implied knowledge thereof took no adverse action; and no one even suggested to [33] plaintiff prior to the summer of 1912 that defendant denied the contract and would not perform it. It was then too late. If unauthorized in the beginning, it was ratified by silence, by receiving the benefits and with knowledge.

Defendant is estopped by Greenlees' habitual conduct permitted by it. All this, in view of the conclusion that the contract is not *ultra vires*.

It may be observed that it was only after defendant's business showed very large profits per share, that defendant denied the contract. To discuss the inequitableness and lack of mutuality of the contract, is useless. None appears. All the promises on one side are the consideration for all the promises on the other. It is an entire contract, and under all the circumstances was equally advantageous to both parties.

Lack of mutuality in enforceability is immaterial after substantial performance. It is contended since the stock was to be paid for "automatically" by its own earnings, this is *ultra vires*.



The contention is unsound in that it overlooks other consideration and the entirety of the contract, substantially performed.

No legal reason is perceived why a corporation may not agree to compensate a servant with part of the net earnings and also with some of its stock to be paid for as in this case.

Whether plaintiff's employment was for an indefinite term and so, at will, also is immaterial after substantial performance, save in respect to damages for discharge.

However, the term was definite. That is certain that can be made certain, as it can be and is by the happening of the stipulated contingency.

See *Pierce vs. Ry. Co.*, 173 U. S. 1, 61 N. W. 550; 32 N. E. 802; 65 N. W. 661; 15 Pick. 351.

If the complaint is sufficient to allege that the contingency upon which plaintiff's employment was to end, had not happened, that the term was not ended when he was reduced from manager to clerk on Mar. 1, 1913 (and it is doubted), there is no proof of it, nor of [34] damages subsequent to that date. His right to the 5% of the net earnings ended then, as his managership did; and he has not proven subsequent damages based on deprivation of the managership and the 5%. The evidence is plaintiff was deprived of \$20 per month for 6 months in 1911, due as salary, that 5% of the net earnings and dividends accruing on the stock, were sufficient to practically pay plaintiff's note when he was reduced in rank, and that other dividends have since accrued. It appears the parties assumed the trial would but

determine the right to an accounting. Plaintiff is entitled to a decree for the 30 shares of stock, for \$120, and legal interest, for an accounting for and to recover the 5% of the net profits to Mar. 1, 1913, and legal interest from when they should have been applied upon his note, viz., from the end of defendant's fiscal year, for an accounting for dividends accrued upon said 30 shares of stock, with their profits or legal interest (dependent on the form in which declared), from the time declared, and costs. And defendant is entitled to have the amounts so found due, applied upon plaintiff's note and interest as they should have been. The balance found will be paid to the party to whom due.

If the parties can agree, no accounting need be had.

Decree accordingly.

BOURQUIN, J.

Filed Jan. 13, 1917. Geo. W. Sproule, Clerk.  
By C. R. Garlow, Deputy. [35]

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Thereafter, a final decree was duly filed and entered herein, on March 17, 1917, being in the words and figures following, to wit: [36]

[Title of Court and Cause.]

**Final Decree.**

On this 17th day of March, 1917, appeared in the above-entitled court the above-named parties, the plaintiff being represented by his solicitors, Messrs. Freeman & Thelen and Norris & Hurd, and the defendant by its solicitors, Messrs. I. W. Church,

Fletcher Maddox, H. G. McIntire and S. D. Bishop, and said parties having exhibited to the above-entitled court the stipulation filed herein prior to the signing of this decree, which stipulation provided for the waiver of plaintiff's right to a reference and accounting and in which said stipulation the above-named parties agree that under the terms and provisions of the interlocutory decree heretofore duly made and given by the above-entitled court on the sixteenth day of February, 1917, the plaintiff, H. G. Hills, is indebted to the defendant Mutual Oil Company, a corporation, on the date of this decree in the sum of Forty-five Hundred and Two and 50/100 Dollars (\$4,502.50), and that the Mutual Oil Company, a corporation, under the provisions of said interlocutory decree is on the date hereof indebted to said H. G. Hills in the sum of Forty-four Hundred and 55/100 Dollars (\$4400.55).

And it further appearing to the Court that said facts so agreed to by the parties hereto are the facts which a reference and accounting would disclose, and the same being duly approved by the Court as and in lieu of the findings [37] resulting from a reference and accounting, and the Court in all respects being duly advised in the premises and after due consideration thereof, on motion of solicitors for the plaintiff, now ORDERS that final decree in accordance with the terms and provisions of said stipulation and said interlocutory decree be entered.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED That within thirty (30) days from the date of this final decree the de-

defendant Mutual Oil Company shall cause to be issued to and in favor of said H. G. Hills, and delivered to him a certificate or certificates of the capital stock in due form, signed and attested in the usual manner, for thirty (30) shares of the common stock of the capital stock of said defendant, Mutual Oil Company, and the defendant shall also pay to the plaintiff the plaintiff's costs and disbursements herein expended amounting to and taxed at the sum of Seventy-five and 10/100 Dollars.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the delivery of said stock to the plaintiff and the payment by the defendant to the plaintiff of the costs above mentioned the said plaintiff shall pay to the defendant the sum of One Hundred and One and 95/100 Dollars (\$101.95).

Dated this 17th day of March, 1917.

GEO. M. BOURQUIN,  
Judge.

[Endorsed]: Filed March 17, 1917. Geo. W. Sproule, Clerk. [38]

Thereafter, on June 9, 1917, a statement of the evidence in said cause was duly settled and approved by the Court, being in the words and figures following, to wit:

[Title of Court and Cause.]

**Statement of Evidence to be Included in Record on Appeal. [39]**

[39]

*In the District Court of the United States, Ninth Circuit, District of Montana.*

H. G. HILLS,

Plaintiff,

vs.

MUTUAL OIL COMPANY, a Corporation,  
Defendant.

**Statement of Evidence to be Included in Record on Appeal.**

On the trial of said cause the plaintiff introduced in evidence a duly certified copy of the articles of incorporation of the defendant company, marked Plaintiff's Exhibit 1, which is as follows, to wit:

**Plaintiff's Exhibit No. 1—Copy of Articles of Incorporation of Mutual Oil Company.**  
DEPARTMENT OF THE SECRETARY OF  
STATE  
of the  
STATE OF MONTANA.  
CERTIFICATE.

United States of America,  
State of Montana,—ss.

I, T. M. Swindlehurst, Secretary of State of the

State of Montana, do hereby certify that I have compared the annexed copy of

ARTICLES OF INCORPORATION

of the

MUTUAL OIL COMPANY

with the original thereof filed in my office on the twelfth day of September, 1909, and the same is a correct transcript, thereof, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana this ninth day of December, A. D. One Thousand Nine Hundred and twelve.

[Seal]

T. M. SWINDLEHURST,

Secretary of State.

TERRITORY OF ARIZONA.

OFFICE OF THE

TERRITORIAL AUDITOR.

United States of America,  
Territory of Arizona,—ss.

I, W. C. Foster, Territorial Auditor of Arizona, do hereby certify that the annexed is a true and complete transcript of the

ARTICLES OF INCORPORATION

of

MUTUAL OIL COMPANY. [40]

which were filed in this office on the ninth day of March, A. D. 1909 at 1:30 o'clock P. M. as provided by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal.

Done at the city of Phoenix, the Capital, this 29th day of April, A. D. 1910.

[Seal]

W. C. FOSTER,  
Territorial Auditor.

ARTICLES OF INCORPORATION  
of the

MUTUAL OIL COMPANY

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned have this day associated ourselves together for the purpose of forming a corporation under the laws of Arizona, and for that purpose do adopt the following Charter:

ARTICLE I.

The name of this corporation shall be  
MUTUAL OIL COMPANY.

ARTICLE II.

This company shall keep an office at Phoenix, Arizona, and may keep other principal offices and places of business at Lawrence, State of Kansas, at which place or places all incorporators', stockholders', and directors' meetings may be held, and all corporate business may be transacted.

ARTICLE III.

The amount of the capital stock of this corporation shall be \$250,000.00 Dollars, divided into 1000 shares of the par value of \$100.00 each of preferred stock, and 1500 shares of the par value of \$100.00 each of common and said capital stock shall be paid up at the date of issuance, or at such time as the Board of Directors may designate, in money, property, labor, or any other valuable right or thing, and the judgment of the Board of Directors or Man-

aging Officers as to the value thereof shall be conclusive.

#### ARTICLE IV.

The general nature of the business in which this corporation shall engage in is as follows, to wit:

To purchase, lease or otherwise acquire lands, mineral, oil and gas rights in Arizona or in any other state of Territory in the United States. To store, refine and transport Oil, gas and other mineral solutions, and to make reasonable charge therefor. To construct, maintain and operate pipe lines, pumping stations, tank cars, barges, storage stations, together with all fixtures and appliances needed for the operation of same, and to carry on the business of producing, refining, storing distributing and marketing petroleum products, vegetable and mineral oils, engaging in any and all kinds of business that a natural person might or could in the United States or any part of the world.

#### ARTICLE V.

The affairs of this corporation shall be conducted by [41] a Board of not less than 5 nor more than 9 Directors, who shall be elected on the first Monday of May of each year as the By-laws shall provide.

#### ARTICLE VI.

The highest amount of liability that this corporation shall subject itself to at any time shall not exceed \$150,000.00 Dollars.

#### ARTICLE VII.

This corporation is formed to endure for twenty-five years after its articles are duly executed, but its charter rights may be renewed (before its charter



expires) from time to time, for periods not exceeding twenty-five years at a time, perpetually.

ARTICLE VIII.

The private property of the stockholders of this corporation shall be and is hereby made forever exempt from all liability for its debts or obligations.

ARTICLE IX.

The capital stock of this corporation shall be and is hereby made forever non-assessable by this corporation for any purpose.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 6th day of Feb. 1909.

J. R. GREENLEES. (Seal)

WILLIS K. FOLKS. (Seal)

JUNIUS UNDERWOOD. (Seal)

HUGH BLAIR. (Seal)

S. D. BISHOP. (Seal)

State of Kansas,  
County of Douglas,—ss.

Before me, J. W. Howard (a Notary Public in and for said County and State), on this day personally appeared J. R. Greenlees, Willis K. Folks, Junius Underwood, Hugh Blair and S. D. Bishop known to me to be the persons who subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 6th day of February, A. D. 1909.

[Seal]

J. W. HOWARD,  
Notary Public.

My commission expires on the 2d day of Jan. A. D. 1910.

Territory of Arizona,  
County of Maricopa,—ss.

I, C. F. Leonard, County Recorder in and for the County and Territory aforesaid, hereby certify that I have compared the foregoing copy with the original Articles of Incorporation of MUTUAL OIL COMPANY filed and recorded in my office on the 9th day of March, 1909, and that the same is a full, true and correct copy of such original and of the whole thereof.

WITNESS my hand and seal of office, this 9th day of March, 1909.

C. F. LEONARD,  
County Recorder. [42]

Filed in the office of the Territorial Auditor of the Territory of Arizona this 9th day of March, A. D. 1909, at 1:30 P. M., at request of H. R. Daggs, whose postoffice address is Phoenix, Arizona.

AIMS ELY,  
Territorial Auditor.

Made A. J. S.

Compared A. M. to G. B.

[Endorsed]: Filed 12th day of Sept. 1910. A. N. Yoder, Secretary of State. By David Pizer, Deputy.

**Testimony of H. G. Hills, in His Own Behalf.**

The plaintiff, H. G. HILLS, being called and sworn as a witness in his own behalf, testified in substance as follows:

(Testimony of H. G. Hills.)

I live in Great Falls. Have lived here sixteen years. I first got acquainted with J. R. Greenlees in August, 1909. I was then manager of the Continental Oil Company in this city. Mr. Greenlees came in and introduced himself as President of a Producing Company in Kansas, explaining that they had decided to open a marketing end of their business; and that the men interested in the first company would practically constitute the selling company, and the name would be Mutual Oil Company; that they were planning to open a station here and later to build sub-stations; and that they were nearly ready to start business. He explained that they would need a manager here. We discussed the plan and he inquired as to whether I would accept the position, taking the profits as a salary. I replied that I would not be in a position to do that. He then agreed that the salary would be the same as I was then receiving, \$120.00 per month. That was about all that occurred in August. Nothing definite was done until December. I did not see Mr. Greenlees from the time of the August meeting until December. Before that he was a stranger to me. The time I met him in December, 1909, was about the 18th of the month. I had then been employed by the Continental Oil Company in the neighborhood of 20 years. At that time Mr. Greenlees told me that he had investigated my standing in the Continental Oil Company. I told him that he [43] knew that I stood right next to the Manager of the State. On the

(Testimony of H. G. Hills.)

18th of December, when Mr. Greenlees came into the office he asked me if I was ready to take that proposition up under the plan we considered. I said I was ready. We then discussed it as to the five (5%) per cent he would pay me from the earnings. I then said we will need a contract, because I wouldn't think of opening up this territory leaving a position of twenty years, giving my experience and then after the business was in operation have you discharge me or have your directors satisfied with not having me; and that I wanted a contract that would be as good to me as the present position. As to the length of time Mr. Greenlees or the Mutual Oil Company was employing me, that was defined in Attorney Cooper's office when Mr. Greenlees told Mr. Cooper that it was to be as long as I was in good health and attended to business. The compensation was to be five (5%) per cent of the net earnings and \$120.00 per month. At that time we had not discussed any stock. In the evening of the same day, Mr. Greenlees said he would like to have me take some stock. I told him that I was not financially able; and that I was not in a position to handle any stock. He said our people will not give any man a district unless he becomes a stockholder, because this is a Mutual Company we are organizing. Mr. Greenlees then said, perhaps, I can arrange it in this manner: I will take your note for 30 shares of the stock, which shall be paid for out of your earnings, and any dividends that will accrue to the stock, and I thought

(Testimony of H. G. Hills.)

it over awhile and agreed to it. In the evening he dictated to me this memorandum contract: Plaintiff's Exhibit 2 is a carbon copy. Mr. Greenlees took the original. I saw Mr. Greenlees write on the original "Mutual Oil Company by J. R. Greenlees, Pt."

Plaintiff's Exhibit 2 is in words and figures as follows, to wit: [44]

**Plaintiff's Exhibit No. 2—Agreement Dated 12-18, 1909, Between H. G. Hills and Mutual Oil Company.**

"Gt. Falls, Mont. 12-18, 1909.

Whereas I have this day executed a note to the Mutual Oil Co. of Lawrence, Kansas for \$3,000.00 same being given for 30 shares of \$100.00 each of the common stock of the Mutual Oil Co. It is hereby agreed that the dividends accruing on this stock together with my share of the net earnings of the Gt. Falls district same being five per cent as set out in one certain contract shall be applied on said note until same is fully paid. The above shares of stock to be then delivered to me together with the cancelled note by the Mutual Oil Co. Should this note not be fully paid in this manner when due it is agreed that a new note for the balance then due shall be executed to be held in the same manner until fully

(Testimony of H. G. Hills.)

paid. The old note to be cancelled and returned.

H. G. HILLS,  
MUTUAL OIL CO.

By J. R. GREENLEES, Pt.”

I signed plaintiff's Exhibit 3.

Plaintiff's Exhibit 3 is as follows, to wit:

**Plaintiff's Exhibit No. 3—Promissory Note Dated  
January 10, 1910, H. G. Hills to Mutual Oil  
Company.**

“\$3000.00 Lawrence, Kansas, January 10, 1910.

Eighteen months after date I promise to pay to the order of Mutual Oil Company at THE LAWRENCE NATIONAL BANK Three Thousand & no/100 Dollars. Value received. With interest at 7 per annum from date, until paid.

H. G. HILLS.”

I signed Plaintiff's Exhibit 4.

Plaintiff's Exhibit 4 is as follows, to wit:

**Plaintiff's Exhibit No. 4—Promissory Note Dated  
July 1, 191—, H. G. Hills to Mutual Oil Com-  
pany.**

“\$3000.00 Lawrence, Kansas, July 1, 191

Six Month after date I promise to pay to the order of Mutual Oil Co. Thirty Hundred and 00/100 Dollars, Payable at its office at Lawrence, Kan. with interest at the rate of 7 per cent per annum from date until paid. Interest payable ———.

Value received. H. G. HILLS.”

When I executed Exhibit 4 on July 1st, I had received a letter from Mr. Williams signed by the Mutual Oil Company. I was advised that Mr. Wil-

(Testimony of H. G. Hills.)

liams was manager and secretary of the company at that time. The company rarely ever signed their letters by hand. They were signed by typewriting with the initials of the person writing the letter generally up in the top corner.

Plaintiff's Exhibit 5 was received in the due course of mail. I executed the note which was attached to it and sent it back. That was the note that was dated July 1st, Plaintiff's Exhibit 4.

Plaintiff's Exhibit 5 is as follows, to wit: [45]

**Plaintiff's Exhibit No. 5—Letter, July 7, 1911,  
Mutual Oil Company to H. G. Hills.**

“OHW.

Lawrence, Kans., July 7, 1911.

Mr. H. G. Hills,  
Great Falls, Mont.

Dear Sir:

We are handing you herewith note dated July 1st, for \$3,000 which we would like to have you sign and return us at your earliest convenience. The former note has been placed with the local bank, and it is necessary to have the note renewed.

Yours truly,  
MUTUAL OIL COMPANY.”

I think Mr. Williams was made Secretary of the Mutual Oil Company February 5, 1910. Mr. Williams' letters were always initialed O. H. W. That was the custom. I knew when I received a letter with the O. H. W. initials that Mr. Williams was the author of the letter. After February 10, 1910, Mr. Williams continued as secretary of the company all the time as far as I know.

(Testimony of H. G. Hills.)

The stock earned \$71.39 up to February 1, 1913. The payment since has been three (3%) per cent made this year, but the earnings have been used as surplus. The 30 shares of stock for which I gave the note was common stock and the dividends to which I just testified was all on common stock. The earnings on the common stock so far as I know since I subscribed for it have been \$74.39 per share. The certificate for the 30 shares was never delivered to me nor were either of the notes ever surrendered to me; both of them are held by the company at this time.

At the time we were at Mr. Cooper's office to have the contract drawn Mr. Greenlees was the spokesman.

Q. And what were the terms and conditions of that agreement, with reference to compensation, and length of service?

By Mr. McINTIRE.—We object, that is a written agreement, that would be the best evidence.

By the COURT.—If he remembers it, he may state it. The document is the best evidence.

By Mr. HURD.—I want to say that a portion of that agreement was not formulated as was stated in the agreement by Mr. Cooper at [46] the time, and that the agreement submitted, or the draft of it, was only of a tentative character, subject to corrections, and it was never signed or executed by either of the parties thereto, so that we could not consent that the copy attached to the deposition was the exact understanding. I agree that there was a tenta-



(Testimony of H. G. Hills.)

tive contract prepared, and that Mr. Cooper handed it over to Mr. Hills, and he mailed them to Mr. Greenlees, who said his attorney was checking them up. The proposition we are submitting, we are not bound by that, because it is only tentative in nature, and does not contain the terms that were agreed upon by Mr. Hills and Mr. Greenlees.

By the COURT.—Were they signed, or ever accepted by either party?

By Mr. HURD.—Never accepted by either party.

By the COURT.—He may answer. If it should develop that the evidence is not competent, of course, the Court will disregard it.

Mr. Greenlees stated the situation to Mr. Cooper and asked me to define the territory which was the Great Northern system up as far as Craig and to the south from Judith Gap, taking in the main line of the Great Northern Railway from the Dakota to the Idaho line. Mr. Greenlees detailed the contract and Mr. Cooper asked when the contract would expire. Mr. Greenlees' answer was "as long as he is in good health and tends to business." The compensation was to be five (5%) per cent of the net earnings from the territory and \$120.00 a month, payable monthly. At that time we had not considered any stock, but after we did consider it the agreement, Exhibit "A," illustrates the situation. The terms of the agreement were to be reduced to writing, but when we went to Mr. Cooper's office the next morning to sign it, Mr. Cooper was busy and didn't have it ready. I got it about January 21st from the post-

(Testimony of H. G. Hills.)

office. I opened it up and saw it was a contract, and then went down to the office and wrote a letter accompanying it to Mr. Greenlees. [47]

I began work for the Mutual Oil Company about January 19th. I carried on my correspondence with the Mutual Oil Company. That began sometime after February 5th. All the business was done in the name of the Mutual Oil Company. I deposited the proceeds of the business in the Great Falls National Bank in the name of the company.

During the time I was there I put in eight stations for the company. I complied with all the terms and conditions of my agreement. The business of the company was established and running in a short time after I took up the work; every station was a success. There were net earnings by the company in this territory for 1911. The earnings were increasing every year in my territory except one year. During the summer of 1912 I made a demand upon the mutual company for an accounting. I did this personally to Mr. Williams and wrote him a letter. He did not answer the letter. Subsequently to 1912 and before the institution of this action, I did not make a personal demand on Mr. Williams or any of the officers of the company for an accounting. We were down in Kansas in 1914 for the purpose of demanding an accounting. A demand for an accounting of the five (5%) per cent was made then, but not given me. There was likewise a demand made as to the earnings of dividends on the 30 shares of stock, which was not given us.

(Testimony of H. G. Hills.)

During the period, from July 1, 1911, to January 1, 1912, they cut my salary \$20.00 per month. I have never been paid that sum. I was discharged September 1, 1914.

Cross-examination by Mr. McINTIRE.

The reason given by the company for this cut in my salary of \$20.00 per month was that the management was not satisfactory. I told them that under the agreement they didn't have any authority to cut my salary and that my management was good. During this period while my salary was reduced, I wrote them in [48] regard to it, asking when the directors would meet, so that I could go down and see them, but they never answered my letter. They stated in their letter to me that the reason for reducing my salary was because of the non-profit making of the district of which I was manager.

I went to Lawrence, Kansas, in April, 1914, Mr. Freeman accompanied me. We had discussions with the officers of the company. Our object in going was to try to get an accounting. The officers responded that Mr. Greenlees was responsible; that they would send him up here to settle. One of the directors, Mr. Fitzgerald, said that he knew about the existence of the contract; that they had talked it over; and that they had always claimed that they were going to make Mr. Greenlees settle for it. They repudiated this agreement made between Greenlees and me. They all said they repudiated it. That was the reason given by them for refusal to give an accounting as to the five (5%) per cent earn-

(Testimony of H. G. Hills.)

ings and the dividends on the stock.

Q. They repudiated it, and said that you were not entitled to any statement for the reason that they had no contract with you. Isn't that in substance what they said?

A. They acknowledged that Mr. Greenlees had made the agreement. But, of course, they always had tried to repudiate it since then.

Q. They certainly tried to repudiate it at that time, and did repudiate it, did they not, and refused you any statement of any kind, isn't that true?

A. Yes, they refused us a statement.

Anyhow, I got no statement of dividends or net earnings. I remember asking that those things be forwarded for 1914. I asked Mr. Williams, the secretary, in 1912, here in Great Falls, if he would give me a report of the earnings of the stock and my balance of salary. He said the company won't acknowledge that the [49] earnings were mine. Mr. Williams said that the company would not acknowledge that I was entitled to anything; and that the company would not pay me the balance of that salary nor give me a report on the stock. That was first done in 1912 that I asked for statements of earnings and dividends. This talk was with Mr. Williams. I did not talk with anyone else connected with the company before that time in respect to the earnings. The next time was when we made this visit to Lawrence, Kansas, in 1914.

I got a letter from Williams with a renewal note designated Exhibit 4, but I did not make a demand

(Testimony of H. G. Hills.)

at that time or request a statement as to the net earnings and dividends, because I didn't think the note was paid for at the time. I gave this renewal note (Exhibit 4) a year and one-half later without asking as to whether there had been any net earnings or dividends. I didn't ask anything. I signed, I sent him the note just as he said.

I received a package of papers from Ransom Cooper about January 21st.

(Witness identifies Defendant's Exhibit 6.)

Q. Now, after having seen this Defendant's Exhibit 6, which is a letter that you say you wrote, accompanying the contract, I will again ask you if that is not the paper?

A. I don't know that it is.

Q. You don't recognize it at all?

A. No, sir, when I heard that read down in Kansas, at the depositions taken from the witnesses down there, I was thunderstruck at the contract, and knew that it didn't embody anything like that that we had asked Mr. Cooper to put into the contract.

Q. As far as you know, you have never read anything apparently, as to the terms and conditions of your agreement, and talk with Greenlees was never put in writing at all?

A. I didn't read that.

Q. No, answer the question. [50]

A. Mr. Cooper didn't put into the contract, if that is it, no, sir.

Q. The terms and conditions talked over by you and Greenlees were never put in writing, with the

(Testimony of H. G. Hills.)

exception of that portion that is called Exhibit "A" of the complaint. That is true, isn't it?

A. Yes, sir.

Q. Now, if I understand you, this agreement,—tentative or otherwise, was gotten up in the office of Ransom Cooper here, was it not?

A. Yes, sir.

By Mr. McINTIRE.—I will read this letter, which is marked Exhibit 6, as part of the cross-examination.

**Plaintiff's Exhibit No. 6—Letter, January 20, 1910,  
H. G. Hills to J. R. Greenlees.**

PARK HOTEL.

Great Falls, Montana, 1-20, 10.

"Mr. J. R. Greenlees,  
Lawrence, Kansas.

Dear Mr. Greenlees:

I have this morning received our agreement from Mr. Cooper, through the mail, and in place of taking it to him for any changes, I wish you would have two copies struck off by a stenographer embodying what would be satisfactory to you and sign one of the copies, sending them both to me and I will sign the other & return it.

Sincerely yours,

H. G. HILLS."

Mr. Greenlees did not comply with this request. I never got back any copies for signature. I received a letter from Mr. Greenlees. I did not receive a copy of the contract.

(Testimony of H. G. Hills.)

I know that there was a stock dividend declared in February, 1913, because I received my payment on some stock that I had. The dividend was not on this 30 shares that I claim, but on other stock that I own in the Company.

Q. You own other stock in this company, do you?

A. Yes, sir.

Q. Where did you get it?

A. I purchased it. [51]

Q. You purchased it in the open market?

A. Yes, sir.

Q. When? A. At different times.

Q. Well, the last purchase made by you was when? A. A couple of years ago.

Q. A couple of years ago? A. Yes, sir.

Q. Oh, a couple of years. Did you own any stock in the company, regardless of this alleged thirty shares, prior to February, 1913? A. Yes, sir.

Q. When did you get that? A. I bought it.

Q. You bought it in the open market, did you, is that true? A. Yes, sir.

There was a stock dividend declared in February, 1913, \$71.39, in the shape of preferred stock for each share of common stock. There had been no dividends of any kind declared prior to February, 1913. They didn't give me any dividends on the stock I bought in the market until we went down in April, 1914. I went to the office and demanded it. They gave me preferred stock at the rate of \$71.39. It was in 1913 that the dividend was declared, but I

(Testimony of H. G. Hills.)

didn't get it until April, 1914. This year, 1916, I received a three (3%) per cent dividend per share on the common stock. I did not receive any in the preceding years, 1915, 1914 and 1913. They earned over *twenty-* twenty-five per cent which went into the surplus fund and increased the value of the stock. I didn't receive anything on the five per cent of the net earnings. I had been receiving only \$120.00 a month from the Continental Oil Company.

Q. And was there any particular reason stated why you should change from one hundred and twenty dollars a month, from one company [52] to one hundred and twenty dollars a month from another company, plus five per cent of its net earnings, plus three thousand dollars of its stock without any payment for it, any particular reason stated for that?

A. It was not plus the stock and plus the earnings, but it was just simply five per cent of the earnings.

By the COURT.—You are asked if you know why you were employed, and given so much of an advance—

A. Because the Mutual Oil Company didn't have a man who knew the selling end of the business, and I had had twenty years' experience, and knew how to build stations, and choose sites, and develop a business, and sell stock on my own responsibility and personalty, so that the company could build stations that didn't cost them one hundred dollars



(Testimony of H. G. Hills.)

a piece, the substations. I did this simply in accordance with the ideas of Mr. Greenlees that the plan was mutual, and that they wanted it to finance itself from the time it started. They wanted the company to finance itself. The idea was we would build a station and with its earnings, we would build the next station, and so on, and so on. I stepped out and sold the stock to build the station, so that they didn't have to put up only about a hundred dollars to a station, and then Mr. Greenlees got enthused with the situation, and kept ordering more stations in.

There was nothing more definite as to how long the arrangement should continue other than Mr. Greenlees told Mr. Cooper it would be as long as he remained in good health and could attend to business. There was nothing said between Greenlees and me as to the duration of the contract or agreement, other than those words, "during your good health or words in substance that." [53]

Redirect Examination by Mr. HURD.

I had several shares of common stock which was stock that I picked up in the market.

**Deposition of I. J. Meade, for Plaintiff.**

The deposition of I. J. Meade was read in evidence on behalf of the plaintiff, in which the witness testified in substance as follows:

I am in the banking business, being vice-president of the Lawrence National Bank of Lawrence, Kansas, and have held the office since March, 1908. I

(Deposition of I. J. Meade.)

had charge of the discount work and the promissory notes. I have seen a note in the sum of \$3,000.00, dated about January, 1910, in favor of the Mutual Oil Company, signed by one Hills. That note is in the possession of the bank now. It was once in possession of the bank as collateral security to the note of the Mutual Oil Company in the year of 1910. I do not remember how long the Hills' note was to run, but I had possession of it about six months. We loaned the Mutual Oil Company \$4,500 and attached the Hills' note as collateral for \$3,000 of the loan. The bank has not the \$4,500 note of the Mutual Oil Company in its possession at this time. It was signed Mutual Oil Company by J. R. Greenlees, president, and it is my recollection that it was attested by the secretary of the company, but I wouldn't say as to that. The Mutual Oil Company's note ran at least thru two renewals; I would say six months at least. The Hills' note was renewed while being used as collateral in the bank. It was renewed on our suggestion. There was other collateral used to secure the other \$4,500 note of the Mutual Oil Company, but I do not remember what the collateral was. We do not keep any record of strictly collateral notes. The Mutual Oil Company got cash on its \$4,500 note and had use of it during the period covered by the notes.

Cross-examination by Mr. BISHOP.

It is my recollection that Mr. Greenlees did the business with the bank relative to this loan. It is

(Deposition of I. J. Meade.)

my recollection [54] that when the Hills' note became due, I called either Mr. Williams' or Mr. Greenlees' attention to its maturity, and requested its renewal.

Redirect Examination by Mr. WILSON.

I wouldn't say that it was Mr. Williams who attended to the renewal of the Hills' note. It has been some time ago. I know that Mr. Williams knew of the transaction, and it is my recollection that Mr. Williams made the final payment on the note.

**Testimony of H. G. Hills, for Plaintiff (Recalled).**

H. G. HILLS, plaintiff, recalled for further examination.

Cross-examination by Mr. McINTIRE.

I show you a paper which I will have marked for identification, Mr. Hills, and ask you if you recognize it (paper I refer to is a letter dated Lawrence, Kansas, July 17th, 1911, addressed to you at Great Falls, Montana, and signed with the typewriter Mutual Oil Company). A. Yes, sir.

Q. You stated this morning, Mr. Hills, that you had bought stock on your own account from time to time? A. Yes, sir.

Q. What was the price you paid for that stock?

By Mr. HURD.—To that we object because it is immaterial.

By Mr. McINTIRE.—This is an action for the specific enforcement of a contract for the sale of

(Testimony of H. G. Hills.)

chattel, personal property. Now, if the stock could be bought in the open market, and the allegations of the complaint are that it cannot be bought in the open market, or that there is none for sale, why, it is perfectly competent to show that it can be bought in the market; and by this testimony I think the jurisdiction of the Court is ousted, for this being an action in equity, if the testimony shows that an adequate remedy at law existed, and that rule applies to this case, why the Court is ousted of its jurisdiction. [55]

By the COURT.—Well, if that is the only reason, the objection will be sustained. This is part of your case, and is not proper cross-examination. Mr. Hills mentioned the fact that he had bought stock, said he had bought stock, but I didn't know why this was brought into the case at all.

By Mr. McINTIRE.—The witness testified that he had bought stock in the market.

By the COURT.—Objection will be sustained.

By Mr. McINTIRE.—If your Honor please, I will read in evidence the letter identified by the witness marked Exhibit 7 for defendant.

**Plaintiff's Exhibit No. 7—Letter, July 17, 1911,  
from Mutual Oil Company to H. G. Hills.**

“Lawrence, Kans., July 17, 1911.

CHW

Mr. H. G. Hills,  
Great Falls, Montana.

Dear Sir:

We overlooked the matter of advising you of the

results of the stockholders' annual meeting which was held July 3rd. The business for the past year in some of our territory was very gratifying and in other parts of the territory it was a great disappointment, which fact was not realized until we closed up our books, which showed up the exact earnings of each station. You will no doubt be somewhat astonished to know that the Montana Territory did a large volume of business during the year, but showed practically no earnings, in which territory we have the largest investment. The net earnings at the close of business May 31, 1911, was 13.3%. If the Montana territory would have made the same earnings as the balance of the territory, the earnings would have been at least 25%. Two-thirds of our capital stock is invested in Montana and we will have to make a better showing, as we cannot expect the rest of the territory with one-third of the investment to carry the burdens of the whole territory.

At the recent meeting of the directors, at which time they went over the entire situation, and it is their opinion that we would have to endeavor to operate the territory more economically, and operate it in such a way so as to reduce the large amount of shrinkage which we had the past year. With the present prevailing low price of the refined oil, have decided it is necessary to make a few cuts in various directions until there was a decided improvement. We regret very much indeed to state that they advised me to inform you that it would be necessary to reduce your salary to \$100 a month

beginning with July 1st, until such a time as the territory was on a paying basis, at which time your salary will be increased according to the net results of the territory. At present, we are doing quite a volume of business in Montana, [56] but the shrinkage and the losses are entirely too much, and it will be necessary for the people in charge of the Montana station to make a special effort to handle the business in such a way as to eliminate or reduce this loss to a minimum. You appreciate the fact it cannot be done in this office and a considerable amount of responsibility in this matter rests upon the force in charge of the territory. The directors were very decided in their opinion and they thought a great deal of the loss of the last year was due to mismanagement. While they are not entirely familiar with all phases of the question, but there is no doubt but what a large amount of the shrinkage could have been overcome if more attention had been given to these details. We regret very much indeed the action we are compelled to take and we trust the station will be handled so that the business will show a profit, and your salary will be increased from time to time according to the net results of the territory.

Yours truly,  
MUTUAL OIL COMPANY.

FMD."

## DEFENDANT'S CASE.

**Testimony of John R. Greenlees, for Defendant.**

JOHN R. GREENLEES, called and sworn as a witness on behalf of the defendant, testified in substance as follows:

## Direct Examination by Mr. BISHOP.

I have resided at Lawrence, Kansas, for many years. In 1909 I was president of the Mutual Oil Company and continued as president until 1914. At the time I was first elected president, there were seven directors, Junius Underwood, S. D. Bishop, Joseph Fitzpatrick, James E. Russell and John R. Greenlees. In the summer of 1910, I made a trip to Montana and California. I took my family for a trip to the Pacific Coast, and incidentally put in considerable time along the way investigating the condition thruout the country as to the prospect for a market for refined oils, and among other places I stopped at Great Falls. I think some of the directors knew that I was on a trip out West, but the matter was not taken up with the board of directors of the Mutual Oil Company before making the trip. I met Mr. Hills for the first time on that trip and we talked over the general conditions in reference to the marketing of oils in this territory. I was here about two days and around the office where Mr. Hills was working as that was the only concern in Great Falls at that [57] time handling oil, and in the course of our conversation I told him that myself and others were interested in the producing end of the business and were curious as to the marketing

(Testimony of John R. Greenlees.)

of it and thought some of engaging in it. Mr. Hills said that if we did decide to come into this territory, he would like to be considered as the man to handle the business for us. I told him that nothing was settled as yet, but that I would bear it in mind. On that occasion there was nothing said as to the terms of employment. I did not see Mr. Hills after that time until I came back here in December, 1909. In December I came to this town and purchased a site at Pocatello, Idaho, and Missoula, Montana. I took the title to this property in my own name. Whether I purchased the others in my own name I don't remember, but think I did. I had a talk with Mr. Hills, plaintiff, in December, 1909. I told him that we had about decided to go ahead here in Montana and discussed with him the matter of his taking charge of the business for us.

It is rather difficult to give the exact conversation; but as I recall the matter it was in substance this: He informed me that he was getting a hundred and twenty dollars a month from the Continental Oil Company, and he told me that he had been a great many years in the oil business in this state, and that he thought his services would be very valuable to us, and I confess that I thought there might be something in it myself; and because of his long experience and valuable knowledge of the business he thought he should have an interest in the earnings of this property that he was to take charge of. There was talk also as to the matter of having an interest in the Company. I think I told him that



(Testimony of John R. Greenlees.)

personally I favored the idea of our employees being interested in the company. He stated that he was not in a position to take any stock unless it could be arranged some way that his paper could be carried. After discussing the matter some little time, that memorandum was executed at the time, and was [58] written out by me as embodying what we had talked over and that would be acceptable. The question as to the paying of this note by the earnings was discussed. Of course neither of us could form any accurate idea as to how long it would take, but we thought it would probably take three or four years. We could only estimate that. After we had talked the matter over,—I stated to him that any contract would have to be formally executed by the board, or ratified by the board, formally executed by the president and secretary, and under the company's seal; and he suggested that Mr. Cooper draw up such a contract as we had discussed. So went to Mr. Cooper's office, and Mr. Hills outlined to him the substance of what we had talked over. Mr. Cooper was to draw up a contract covering the matter, and it was to be forwarded to me to present to the company, and secure the signature of the proper officers.

I am not sure what was said with reference to Mr. Hills signing a contract, but my recollection is that he was to draw up a contract and I think he was to execute it and send it down for our consideration. At any rate it was to be submitted to the board of directors. The duration of his employment was

(Testimony of John R. Greenlees.)

discussed somewhat and it was expected that it would last for several years at any rate. We figured that it would take three or four years for these earnings to pay out his note. I believe that was the time he executed the note. Prior to coming here in the month of December, 1909, I had not been directed by the board of directors to make this contract with Mr. Hills. I did not in any way suggest to the board of directors that I should go on and make a contract with Mr. Hills. I couldn't, I didn't know anything about what sort of a proposition Mr. Hills wanted. After returning home, I put that memorandum contract marked Exhibit "A" in a vault there in my office among my private papers. [59] About a month later I got a letter from Mr. Hills enclosing two copies of the suggested contract. Defendant's Exhibit 6 is the letter that accompanied those contracts. Defendant's Exhibit 8 is one of the copies of the contract, which was enclosed with the letter marked Exhibit 6. This contract and letter were placed with the other papers in the vault with the expectation of submitting it to the board at some future meeting. When I returned home I did not submit the contract, Exhibit "A," and the contract, Exhibit 8, to the board of directors of the Mutual Oil Company. I think I mentioned it to Mr. Fitzpatrick and he was very much opposed to anything of that kind being entered into, so the matter was allowed to drift. I never from that time submitted that contract or proposed contract to the board of directors of the

(Testimony of John R. Greenlees.)

Mutual Oil Company for their ratification or approval. About the time this came up I was called away on other business and was away pretty much all the time. I didn't have the opportunity and there was, I believe no regular meeting of the board that I recall until in the June following the annual meeting, but we went ahead trying to get the business started. I did not discuss this contract with any of the individual members of the board outside of Mr. Fitzpatrick as to the advisability of entering into it that I remember of. At the time this Hill's note, marked Exhibit 3, of January 10, 1910, was put up as collateral security for indebtedness of the Mutual Oil Company, I had never told any of the board of directors that the note was to be put up as collateral security. I am not sure that I can tell just how this note was placed as collateral security for this indebtedness. I know this much, that sometime in the spring, I think in April, we were using considerable money in equipping stations. I arranged for a loan of \$5,000 for the Mutual Oil Company at the Lawrence National Bank one time when I was at home, and signed up a note and endorsed it individually. [60] I don't know how this note became attached to the note that I executed, unless the bank may have asked for some collateral to be put up with it, and the man in my office, Mr. Howard, not knowing the circumstances must have taken this note and left it with the bank. It was never endorsed by me nor by the Mutual Oil Company. Mr. Howard was my personal employee

(Testimony of John R. Greenlees.)

and had nothing whatever to do with the affairs of the Mutual Oil Company. The note is not endorsed by the Mutual Oil Company and the only collateral that I ever left with them always had to be endorsed or signed in blank whatever the collateral happened to be. I have no recollection whatever of placing this note in the Lawrence National Bank as collateral security for this indebtedness.

In March or April, 1910, some parties took up the matter of a sale for properties which I owned in Oklahoma, and as that deal got under way, it took up all my time and I was never in Lawrence more than just a day or two between trips. A little later I was obliged to go to Europe four different times.

Mr. Williams became secretary of the Mutual Oil Company as soon as we began to do any business. I never told Mr. Williams of any proposed contract between the Mutual Oil Company and Mr. Hills up to the middle of the year 1911, that I remember of, nor did I ever tell him that this note for \$3,000 signed by Mr. Hills was for stock to be paid in the manner indicated by Exhibit "A." I think that in the summer of 1911, after my return from Europe, Mr. Williams called my attention to the Hills' note and, I believe, at that time brought it back and left it in my office. He said that he had found it in the Lawrence National Bank. Since that time the note and all of the papers, which have been introduced in evidence have been in my possession.

This matter of Mr. Hills was discussed at a meeting of the board of directors, which occurred sometime in the early [61] period of the fall, 1912. I

(Testimony of John R. Greenlees.)

communicated to Mr. Hills the result of the meeting of that board by letter. Defendant's Exhibit 9 is the letter. I don't remember that I had a reply from Mr. Hills.

The matter of the contract was never discussed by me at a regular meeting of the board. The larger percentage of the board of directors had no knowledge whatever of this contract from me.

Defendant's Exhibit 9 offered in evidence is as follows:

**Defendant's Exhibit No. 9—Letter, November 25, 1912, J. R. Greenlees to H. G. Hills.**

**“MUTUAL OIL COMPANY  
LAWRENCE, KANSAS.**

Nov. 25, 1912.

H. G. Hills,

Great Falls, Mont.

Dear Mr. Hills:

Yours of the 21st just at hand. I am unable to say as yet whether I will be able to get out there or not, though I hope to do so. I can probably tell within the next thirty days. I have been kept so very busy with other matters that required personal attention, that I have scarcely had any time to devote to Mutual affairs or to my own personal business. I am getting these matters pretty well out of the way now however. As soon as I can tell about the trip out there, will advise you. As you are aware, the Directors refused to sanction the arrangement that we had partially made, and nothing was done in regard to it.

In regard to the matter of some stock for you, I want to do the best I can to help you out, but am unable to carry the full amount that you desire, and suggest this as something in the nature of a compromise arrangement. I will undertake personally to provide you with ten shares of stock, which would be \$1,000 worth, crediting you with \$700 on same, and you send me your note for \$300 for one year, at 7% payable to me, which I will attach to the certificate, and hold for that time for you. This would give you whatever the earnings were the coming year, to apply on it, less the interest, or, if you prefer instead, I will secure you even shares, fully paid up, for \$700. I am unable to carry the full amount that you wanted, but want to be absolutely fair with you, and I think you will agree that this is doing more than most people would do to help you out. I am sorry that the Board would not consent to the arrangement we contemplated, but under the circumstances, they of course had the right to say, and did so. Kindly let me know if this meets your approval, and on which basis you wish it arranged. This is the best that I can undertake to do, and I make this suggestion merely to show you that I want to do the right thing by you. Please understand I am doing this as a private individual not as an officer of the company, because the company (which had not yet been organized when we talked over this arrangement) [62] when it was organized and directors elected, refused to ratify the arrangement

(Testimony of John R. Greenlees.)

we had figured on. I think this will make it clear to you.

Yours truly,

J. R. GREENLEES.”

I did not go out to see Mr. Hills in pursuance to that letter. I sent Mr. Williams to see him two or three months afterwards, when I found that I couldn't get away myself. I had no knowledge that this note had ever been renewed. The renewal note was dated July 1, 1911. At that time I was in Europe and I didn't return until sometime later in the fall.

Defendant's Exhibit 8 offered and received in evidence is as follows:

**Defendant's Exhibit No. 8—Agreement, Dated —  
Day of January, 1910, Between the Mutual Oil  
Company and H. G. Hills.**

THIS AGREEMENT, made this — day of January, A. D. 1910, by and between the MUTUAL OIL COMPANY, a corporation, having its principal place of business at Lawrence, Kansas, party of the first part, hereinafter called the Oil Company, and H. G. Hills, of Great Falls, Montana, party of the second part, hereinafter referred to as Hills,

WITNESSETH: Whereas the Oil Company is engaged in the business of buying and selling and distributing thruout the United States oils and oil products, and

Whereas, it contemplates the establishment of a station, depot or distributing point at Great Falls, Montana, for the purpose of selling and distributing

its said products throughout that portion of Montana which is covered by the Great Northern System of railways and all of that portion of Montana tributary to said railways, save and except so much of the State of Montana as lies south of Craig Station on the Montana Central Railway, so-called, and save and except also so much of said State as lies east of Judith Gap on the Billings and Northern Railway, so-called, and,

Whereas, the Oil Company has proposed to said Hills that if he will accept such appointment, it will constitute him its general agent for the conduct of its business in the territory aforesaid, and that the headquarters of such agency shall be at the city of Great Falls, Montana, and the said Hills has accepted such proposal on the terms and conditions herein provided.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, and of the mutual and dependent arrangements and covenants herein contained,

IT IS AGREED AS FOLLOWS:

That the Oil Company shall forthwith procure and establish a suitable warehouse and an office for the conduct of its business, which warehouse and office shall be situated at the city of Great Falls Montana, and that the said Hills shall take charge thereof and of said business. [63]

That the said Hills shall by the terms hereof be obligated to conduct such business in a good, safe and business-like manner, and to devote his entire time thereto to the end that the said business may be



and become profitable to the parties hereto. That he shall be obligated to keep correct books of account of all transactions and use the best efforts of a reasonably good business man to build up, establish and maintain such business.

That he shall be empowered to establish sub-agencies at such places within said district as he shall deem advisable for the purpose of promoting the sales of said products and shall have charge of promoting the sales of said products and shall have charge and control of such sub-agencies, subject to the approval and directions of said Oil Company.

That the Oil Company shall from time to time furnish said Hills with schedule of prices at which the products are to be sold throughout such territory, and shall keep said Hills advised of such prices, and he shall be obligated to sell at such prices. He shall also be obligated to carry on the business of such agency and territory in accordance with such reasonable rules and regulations as the Oil Company may make for the conduct of such business.

That said Hills shall furnish the Oil Company a good and sufficient Bond in such sum as the Oil Company may deem necessary, conditioned that he will account for and pay over to the Oil Company all moneys which may come into his hands or under his control belonging to the Oil Company, and the Oil Company shall be obligated to pay the premium or premiums on such Bond and said premium or premiums shall be a part of the expense incident to the business of such agency.

The said Hills shall be obligated to deposit the

moneys collected by him in and about said business in some suitable bank in the city of Great Falls, Montana, in the name of the Oil Company as soon as the same shall be collected, and all disbursements which shall be made by him in and about said business shall be made by check on such account signed by him as the Agent of the Oil Company.

The said Hills shall be authorized to collect all moneys that shall become due for the sale of products throughout his district as the same become due. He shall keep correct books of account showing all of his transactions, and when required by the Oil Company, shall make detailed reports showing the condition of the business of such agency.

The Oil Company shall pay the said Hills for his services as such agent the sum of One Hundred and Twenty Dollars per month, payable monthly on the first of each and every month, commencing with the — day of ———, 1910, and such further sum annually as shall be equal to five per cent (5%) of the net profits from the business which shall be transacted within the territory above mentioned.

It is further understood and agreed that the said Hills shall be and remain in the employ of the said Oil Company in the capacity hereinbefore provided as long as the said Hills shall conduct the said business in a careful, prudent, business-like and satisfactory manner. [64]

IN TESTIMONY WHEREOF, the said Oil Company has caused its corporate name to be hereto subscribed and its corporate seal affixed by its president, in that behalf duly authorized, and the party

(Testimony of John R. Greenlees.)

of the second part has set his hand and seal in duplicate the day and year first above written.

MUTUAL OIL COMPANY,

By \_\_\_\_\_,

President.

\_\_\_\_\_ (Seal)''

Cross-examination by Mr. FREEMAN.

When I first came to Montana in August, 1909, my stopping here was merely incidental to the trip. I wanted to get all the information I could as to market conditions in the Northwest. I was not then in a position to make any proposition to Mr. Hills. I did not in August, 1909, make that proposition to Mr. Hills for the purpose of having him sever connection with the company for which he was then working to enter the employ of the Mutual Oil Company. He did not tell me upon that occasion that he was not then in a condition to consider my proposition. I did not ask him to consider the proposition or to write me. Exhibit No. 11 is my answer to the letter of Mr. Hills, Exhibit 10.

Exhibit 10 offered and received in evidence is as follows:

**Defendant's Exhibit No. 10—Letter, August 27, 1909, H. G. Hills to J. R. Greenlees.**

“Gt. Falls, Mont., Aug. 27, 1909.

J. R. Greenlees,

Lawrence, Kan.

Dear Sir:

I am prepared to consider your offer in the manner suggested when you were in Gt. Falls.

(Testimony of John R. Greenlees.)

I would rather not discuss it in detail until you may have decided as to whether or not you will locate here, unless necessary, as my employers may at any time inquire whether an offer has been made me, in which case they would possibly request that I decide at once and I would hardly be in a position to do so.

I trust you will understand my situation in the matter.

Sincerely,

H. G. HILLS."

Plaintiff's Exhibit 11 offered and received in evidence is as follows: [65]

**Plaintiff's Exhibit No. 11—Letter, September 1, 1909, J. R. Greenlees to H. G. Hills.**

“AL-LU-WE OIL COMPANY,  
Oil Producers Operating in Oklahoma.

J. R. Greenlees, Manager,

Lawrence, Kansas, Sept. 1, 1909.

H. G. Hills,

Gt. Falls, Mont.

Dear Sir:

Yours of the 27th at hand. Will take the matter up with you a little later, probably in person. It will probably be a matter of thirty days or more before we will be likely to see you.

Yours truly,

J. R. GREENLEES."

In December, 1909, I was here, I think, two days. This memorandum contract signed by me as President of the Mutual Oil Company, was signed upon

(Testimony of John R. Greenlees.)

that occasion. I believe I took the original back with me and put it in the other papers in my vault. I am unable to say how long it remained there, but I think until about the time this suit was filed in September, 1914. As I recollect that was the first time I took it out of the safe. It is my individual safe. The contract which Mr. Hills sent me January, 1910, was put with the other papers. I think this note was with them. My idea in putting these papers in my safe and leaving them there for something over two years, was that at this time the Mutual Oil Company was not engaged in that business; it was chartered that was all. They began doing business sometime in January, 1910, when Mr. Williams was engaged as secretary and manager. At the time I received this contract, the company was getting ready to do business. I was nominated president when the Charter was granted. I was the moving spirit in originating the company. I served as president until 1914. There is no particular reason why I keep the contract and note in my safe without bringing it to the attention of the company. I simply got busy in these matters and the thing was overlooked, I presume. I was busy during the month of January, 1910, in organizing this company and getting started. I was away a large part of the time after [66] January. I knew that Mr. Hills was going along with the idea that he was to get \$120 a month, and this other matter would be acted on by the company. It was not for the purpose of injuring Mr. Hills that his note was not

(Testimony of John R. Greenlees.)

taken before the board of directors. Only a small part of the stock had been subscribed at that time.

Q. What reason did the board of directors ever give that it would be contrary to the interest of the company to allow him, or to issue this amount of stock to him under the circumstances, as you had arranged with him?

A. As I say the board never took any formal action on the matter until sometime in the fall of 1912. The matter came up, I think Mr. Williams was out here, and Mr. Hills had raised the question as to the contract. He came back and investigated it, and a meeting was called, and these old papers were dug up. They were not formally before the meeting, but the board simply informed me that they would have nothing to do with it.

In 1912, at the time I wrote this letter to Mr. Hills, the company was only earning moderate dividends. It is not true that it earned \$750 on every \$1000 of stock. As to my statement in a letter to Mr. Hills that I would provide him with ten shares of stock, crediting him with \$700, I don't know whether you could say that the stock had earned seventy per cent. Most of the earnings came from the purchase of gasoline that I made for the company on which there was a very high advance. It was not from the legitimate earnings of the field, although it belonged to the company. The rapid increase in the value of the stock had nothing to do with my failure to carry out the memorandum agreement with Mr. Hills.

Mr. Bishop, who is here at present as attorney for

(Testimony of John R. Greenlees.)

the company, was one of the directors. We did not have any meeting of the board of directors until June, 1910. [67]

There may have been some record of meetings, but they were not kept as they were from that time on.

During the period from January until June, 1910, there were some purchases of materials. I did considerable of the purchasing. Mr. Williams and myself looked after those things and, if I was there, matters of that kind were referred to me, but not if I was out of town. Mr. Russell and one or two of the others were in or out of the office nearly every day consulting Mr. Williams about matters as they came up.

Between January and June, 1910, I purchased some tanks from the Columbia Steel Tank Company to the amount of \$4,000 or \$5,000. Mr. Williams was in the *employee* of the company February 26, 1910, and in dictating letters frequently used his initials OHW. Generally speaking, in February I was practically the head of the company and all contracts awaited my approval. I don't know that it was so in cases of emergency. It is not true that in February, 1910, I had the absolute management and control of the company. Usually letters of that character were referred to me if I happened to be there; if not, Mr. Russell went over them with Mr. Williams. I presume that he never wrote Mr. Hills anything concerning these thirty shares of stock as to whether he could have them or not until Novem-

(Testimony of John R. Greenlees.)

ber, 1912. During this period, from January to June, 1910, I consulted with Mr. Bishop, the company's attorney, if anything very important came up for action. I don't remember that I consulted with him about this contract. While I considered it an important matter, the general work of opening up the business was a matter of great importance then; that took up all our time. Mr. Hills left the employ of his own company during January, 1910, and this understanding that I had with him had all to do with it, I presume. I didn't say we had offered him a better proposition than he had. We had talked over a better proposition that was to be submitted [68] to my people later on. It was not submitted for the simple fact that we didn't get fully organized until June. I don't recall why it was not submitted then. I don't think I ever submitted it to Mr. Fitzpatrick, but I talked it over with him. I did not start in with Mr. Hills with any purpose of fooling him. When I wrote Mr. Hills in January, 1910, that I had submitted the contract to our attorney, Mr. Bishop, to check up, I think, as a matter of fact, at that time Mr. Bishop was away and there was nothing done about it and the thing was overlooked. That is the only way that I can account for it. I expected to submit that to Mr. Bishop, but found him away.

(Plaintiff offers in evidence Exhibit 12.)

Q. If your board was having no meetings at the time you came out here to Great Falls and didn't have until June, 1910, why did you say to Mr. Hills



(Testimony of John R. Greenlees.)

that the contract would have to be submitted to the directors, the board, for their approval?

A. For the simple fact that both he and I knew that any contract with the company would have to be executed by the officers.

I am not sure that I dictated this agreement to Mr. Hills. We talked the thing over as to what he thought he ought to have, and then this memorandum was drawn up. I don't know why the memorandum agreement did not incorporate the requirement that the contract was to be subject to the approval of the board. I believe his \$3,000 note was executed at the time of the agreement. I think I took the note down to Lawrence, Kansas, and it was afterwards put up as collateral for a note of the Mutual Oil Company that I had executed. I believe the first Hills' note was for eighteen months. We estimated it would be three or four years before it would pay up on the dividends. I have absolutely no personal knowledge of the transfer of Mr. Hills' note for \$3,000 out of my safe to the Lawrence National Bank. The situation was [69] simply this: Mr. Howard was in my office and he looked after my personal affairs that came up. Not knowing about the facts in the case, I presume that they asked him if there was some collateral to go with that note and he found this up there and took it up to them. That is the only way I can account for it. I do not think the company had much collateral at that time. It is not true that he financed all these substations by the subscription of stock. In my

(Testimony of John R. Greenlees.)

letters to Hills, I suggested to him that he try to get ranchers to buy stock. He only sold about twenty or twenty-two shares. I did not think it would be perfectly proper to take this \$3,000 note and put it up as collateral until the matter had been sanctioned by the board.

Redirect Examination by Mr. BISHOP.

I don't think I ever submitted that contract to you. I intended to but I think when I went to submit it to you you were out of town. The thing was put away and I was away so much that it was overlooked again. At the meeting held in November, 1912, I believe you asked to see those contracts and I said they were in my safe. It is my recollection that Mr. Hills sold twenty or twenty-two shares of stock at \$100 a share.

**Testimony of O. H. Williams, for Defendant.**

O. H. WILLIAMS, called and sworn on behalf of the defendant, testified as follows: I am Secretary and General Manager of the Mutual Oil Company residing at Kansas City, Missouri. I have been continuously in the employ of the company since January 15, 1910. I first became acquainted with Mr. Hills when I made by first trip to Montana some time the latter part of December, 1910. Mr. Hills was then District Manager of our company. I was there three or four days and went over the details of the business with Mr. Hills. I do not recall Mr. Hills saying anything to me at that time in reference to a note or contract, or note given to the Mutual Oil Company. The first recollection I have

(Testimony of O. H. Williams.)

of the note was when Mr. Meade, Vice President of the Lawrence National [70] Bank, called my attention to the Hills note attached to the Mutual Oil Company's note as collateral, and being past due requested me to get a renewal. I have no recollection of discussing this note or its consideration with anybody prior to that time. As Mr. Meade had called my attention to the note, I acted on his suggestion and sent to Mr. Hills for a new note. Exhibit 4 was the note that Mr. Hills returned. I did not discuss this matter with any of the board of directors. I don't remember seeing the unexecuted contract until this action was brought. I was going thru Mr. Greenlees' files, or in his vault one time, and found this memorandum contract. We had lost the deed to the Missoula property, and I was going thru his records trying to find that deed, and that was when I first saw and read this memorandum contract referred to here as Exhibit "A," and dated December, 1909. That was either the latter part of 1911, or the early part of 1912. My recollection is that Mr. Greenlees was not at home at the time I discovered the contract, and I discussed it with Mr. Russell, the vice-president, who instructed me to deliver those papers to Mr. Greenlees, which I did. I got the note from the bank and delivered it to Mr. Greenlees. I have no recollection of the whereabouts of the first note as it had been renewed. I only remember the second note and delivered it to Mr. Greenlees on Mr. Russell's instructions. I was here in August, 1912, and saw Mr. Hills, which is the first

(Testimony of O. H. Williams.)

recollection I have of Mr. Hills discussing the contract or the note with anyone.

Q. You may state what was the conversation which you had with Mr. Hills upon that occasion?

A. The matter was brought up, I recollect, by Mr. Hills with reference to his contract, and so on, at which time I advised him that the Mutual Oil Company as a board of directors did not consider they had any contract with him, because the contract had never been ratified, and if he had any contract, or any agreement, [71] it was with Mr. Greenlees personally, as the Mutual Oil Company never recognized or approved the contract.

Q. What, if anything, did he say at that time?

A. Well, I cannot repeat the exact conversation, but it was simply along the line that it was a contract and he would insist upon it, or something of that nature.

Q. Upon your return, what did you do with reference to calling a meeting of the board of directors?

A. I then discussed the matter with Mr. Russell, and we called the board of directors together, and after our regular routine business was done then Mr. Russell brought up this contract, which was the first time it was ever presented to the board of directors. It was done informally after the business of the company had been transacted.

Q. Mr. Greenlees was present upon that occasion?

A. He was.

Q. That was the first time?

(Testimony of O. H. Williams.)

A. That it was ever brought up at a director's meeting.

Q. Mr. Greenlees, as I understood you to say, had possession of these notes from the time they were delivered to him? A. He had.

Q. And the memorandum contract?

A. Yes, sir.

Mr. Hills' salary was reduced during the year 1911. The voucher checks were sent for the salary and were cashed, and the cancelled vouchers returned. Then afterward his salary was raised. He was manager during all of the time that he was in the employ of the company until practically March, 1913, when Mr. Hult became manager. Mr. Hills still remained in the employ of the company as a clerk until he was discharged in the latter part of August, 1914. After the meeting of 1912, Mr. Greenlees employed me to see Mr. Hills and settle with him on his behalf. [72] That was sometime in February, 1913. I was coming up here and Mr. Greenlees gave me ten shares of common stock, which was his personal stock, and asked me to endeavor to make some kind of a settlement with Mr. Hills personally. I told Mr. Hills when I attempted to settle with him that I was merely representing Mr. Greenlees in a personal matter. I informed Mr. Hills that the Mutual Oil Company repudiated,—had never ratified the contract, and if he had any grievance, it was against Mr. Greenlees and the company considered it a personal matter between Mr. Greenlees and Mr. Hills, and that I was

(Testimony of O. H. Williams.)

willing to do anything within reason to make an amicable settlement. I then told him that Mr. Greenlees had given him this ten shares of stock and he refused it.

Mr. Hills sold for us in Montana approximately twenty-two shares of stock at \$100. The present market value of the Mutual Oil Company's stock is \$162. That is the book value.

Q. Can stock be bought for that price? In considerable quantities?

A. Well, there is still some treasury stock.

Q. Isn't it true that Mr. Greenlees is offering his stock for that much?

A. Mr. Greenlees is offering his stock, and there is another party offering his stock for \$160.

Cross-examination by Mr. HURD.

There are more than thirty shares of common stock in the treasury at the present time with the book value of \$162. There is no common stock on the market offered for \$100 per share that I know of, nor do I know of any that can be purchased for the sum of \$100.

I was appointed secretary of the company on January 15, 1910. Mr. Holt and Mr. Lou Jones took the matter up with me and told me about the Mutual Oil Company. At that time I was not personally acquainted with Mr. Greenlees. They were stockholders [73] at that time and asked me to call upon Mr. Greenlees and he offered me this position which I accepted and then bought ten shares of stock. It was not a part of our arrangement at

(Testimony of O. H. Williams.)

that time that I should become a stockholder. The board of directors advised me that I had been elected secretary and ever since that time I have had charge of the books. I knew that the company had been incorporated by J. R. Greenlees, Willis K. Folks, Junius Underwood, Hugh Blair, and S. D. Bishop about January 15, 1909, and they put me in as secretary in January, 1910. At that time they had a president, but they did not have an office. Their business was done in Mr. Greenlees' office. After I became secretary and the business was started, I rented the office myself and took certain data and memoranda from Mr. Greenlees' office. I don't know of anything having been done in a business way before the office was rented for the company. I found the memoranda concerning the Missoula property in Mr. Greenlees' files and also took over from his office copies of letters and letter files, and so forth. The records of business done by the company which I took from Greenlees' office were a few letters and a check book. I don't know that they had any treasurer. I paid out money for the Mutual Oil Company and in everything that I did was in representing the company. The letters that I wrote Hills was on behalf of the company. I consulted Mr. Greenlees on affairs, but I was active manager. There was nobody so far as I know who was active manager until I assumed the position of secretary. I do not know of various contracts made by Mr. Greenlees prior to the time I became secretary. As to the Columbia Tank contract I figured largely in

(Testimony of O. H. Williams.)

that myself. I wrote the letter, Exhibit "F," attached to that deposition. I knew at that time that the Oil Company had entered into a contract with the Tank Company for materials. That was a little over five weeks after I had assumed the position [74] as secretary. At that time the oil company was entering into contracts, but they were not necessarily referred to Mr. Greenlees for final approval. Exhibit "F" refers to a contract with the tank company, signed by Mr. Greenlees and myself as president and secretary. We had other contracts prior to June, 1910, for materials and other matters. This tank contract is the only one that I can recollect having been signed by Mr. Greenlees. We entered into contracts generally in the transaction of business purchasing tanks and merchandise in the open market; simply direct purchases, not contracts in the sense of a formal written instrument. These letters that went to the different concerns were signed practically by myself after I took charge, mostly signed on the typewriter. When the name Mutual Oil Company was signed on the typewriter, it was intended to have it represent the company. It is my recollection that there was no meeting of the board of directors prior to June, 1910. I went ahead and did business as it appeared to me proper. After I took charge Mr. Greenlees did very little. Mr. Russell was more active. Before I took charge, I had no knowledge of how it was done. Whatever business there was, so far as the data shows, was done by Mr. Greenlees for the company. At the



(Testimony of O. H. Williams.)

June meeting, 1910, the directors present were Mr. Blair, Mr. Bishop, Mr. Underwood and Mr. Greenlees. The stockholders were there *to*. It was a stockholders' meeting and that time we elected directors. They were elected to succeed the incorporators who evidently were acting as a board up to that time. Mr. Russell took an active part up to June, 1910. He was not an incorporator, simply a stockholder. I deferred to Mr. Russell's wishes. We endeavored to handle the business to the best advantage of the stockholders. I cannot give any real reason for their not having a directors' meeting until June, 1910, except that they were in and out of the office and we knew what was going on. It is not a fact that the operations of the company [75] during that time were merely an informal matter handled by Mr. Greenlees and myself. When the data belonging to the Mutual Oil Company was brought from Greenlees' office, I don't know whether I went after it or it was delivered to my office. There was nothing even to me but a few letters and a check book. Mr. Greenlees did not make his office in my office thereafter. It was along the latter part of 1911 or early part of 1912 that in rumaging through his vault I discovered these exhibits representing the contract. At that time I did not take charge of it for the oil company. Mr. Greenlees never discussed his arrangement in detail with me. He said that Mr. Hills was employed out here as manager of the company. After I took charge in January the correspondence came to my office. I opened that cor-

(Testimony of O. H. Williams.)

respondence but never saw the note marked Exhibit 3 in this case coming through the mail to the Mutual Oil Company. The first recollection I have of that note was when it was found in the Lawrence National Bank. I did not keep a record file at that time of notes and bills payable to the company. We didn't open any books until four or five months afterwards. During that time we didn't have any record of the corporation transactions. It was probably sometime in April before we opened any books. Prior to that there was just a memorandum made, and later on entries were kept from that. We had so many things to do, all the stations to build, equipment to get and all the forms to get out. We incurred debts to the tank company and other concerns, but they were not paid for, perhaps, 50 or 60 days after the stuff was purchased. I do not know of any contracts being disputed by the company through lack of authority on the part of Mr. Greenlees. No such question was raised with the tank company. It was not necessary. I practically handled that transaction. The money to pay our bills came from the stockholders, I went ahead on my own initiative and paid it out. There was no specific authority from the board of [76] directors. About the only reference of business matters to any of them was to Mr. Russell. The incorporators were considered to be acting as a board of directors from whom I was supposed to receive authority to act as manager and secretary. Prior to June 1910, Mr. Fulks had not authorized me to do

(Testimony of O. H. Williams.)

any business. Junius Underwood was in and out of the office like other members and had his say in the matter. Also Hugh Blair and Mr. Bishop, Mr. Greenlees, Mr. Underwood, Mr. Blair, Mr. Fulks and Mr. Bishop would drop into the office now and then and kept fairly well in touch with what was happening. They were the five persons who assumed to act as a board of directors. Prior to the June meeting of 1910, Mr. Russell was merely a stockholder. He was elected director at the June, 1910 meeting. I think Mr. Fitzpatrick was made a director at the meeting of June, 1910. In June, 1910, the new directors were Greenlees, Bishop, Russell, Fitzpatrick, Blair and I think T. H. Chalkey. They did not hold regular directors' meetings after June. There were very few meetings for the first two or three years. The officers of the company practically transacted all of its business, except the president, he had very little to do with it. He was away most of the time. If I was not talking about this particular case, I would not say that Greenlees had authority to direct what would be done. He was president of the company and I deferred to his wishes so far as his office would go. Matters coming up when Mr. Greenlees was away were not always submitted to him for his advice. He was not necessarily looked to as the final resort. I knew that his office was a superior office to mine, but did not always regard his judgment as binding upon me. I put my judgment up against his in some things. In one instance we had a clash and I went ahead and transacted the

(Testimony of O. H. Williams.)

business. I did not look to Greenlees as my superior officer in all cases, except that one. I do not now recall any specific instance where I did not observe the [77] directions of the superior officer of the company.

I prepared the note (Exhibit 4, for the plaintiff) which was transmitted to Mr. Hills through the mails. It is in my handwriting and for the sum of \$3,000. The other note for \$3,000, dated January 10, 1910, Exhibit 3, I did not have before me at that time, but knew the contents of it. I cannot tell why it was that the interest was not included in the renewal note. I cannot explain why the renewal note for \$3,000 is the same as the original note. I don't recollect asking Mr. Hills to pay interest and evidently no attention was paid to the interest. It was not because I knew that the Hills' note was to be paid out of the earnings and dividends. I cannot explain why the interest was not called for or not included in the face of the note. I evidently knew that Mr. Hills gave the note in payment of the stock. I didn't know the nature of the contract until 1911 or 1912. I evidently learned of this note being given in payment for stock sometime the latter part of 1911. In January, 1910, I did not know that this note was given in payment for stock. I understood that Mr. Hills, at the time he was employed, was to be a stockholder. I do not know as I knew at all times that this \$3,000 note was outstanding in favor of the company. I evidently knew that it had been given in payment for stock. Up to that time the

(Testimony of O. H. Williams.)

note was not in my office; Mr. Greenlees had it. I evidently knew that it was a Mutual Oil Company note. I knew that the company was getting money from the bank with which to transact business, and when Mr. Meade of the Lawrence National Bank called my attention to the fact that the Hills' note was unpaid, I evidently knew that the note had been turned over to the company for stock. I did not have the stock issued to Hills as I was not instructed to issue any stock. I had authority, but the note was not delivered to me and I was not told to issue stock for that note. In some cases we may have received part cash and part note [78] in payment for stock. I have no explanation to offer at all about the interest. I never saw Exhibit "A" until some time the latter part of 1911 or early part of 1912. I first found it in Mr. Greenlees' papers, but did not tell the Board of Directors immediately about it. I discussed the matter with Mr. Russell. I was permitted by Mr. Greenlees to examine his vault for papers. I don't recollect whether he was there at the time or in the city. He made some long trips and was away a great deal of the time. I never discussed the matter of finding the contract among his papers with Mr. Greenlees at all. I disclosed the information to Mr. Russell as I thought he was entitled to it, because of the unusual nature of the contract.

I had never been in the oil business before and got my experience from the Mutual Oil Company people.

(Testimony of O. H. Williams.)

I did not know what the usual work was in Montana, or what conditions were to contend with. I knew that we had to compete with the Continental Oil Company, and the Pure Oil Company came in afterwards. I said I thought it was an unusual contract in that it gave something without something in return. I did not think that, a man starting a concern in a business like Mr. Hills did here in Montana, would be entitled to compensation to that extent. This view was not due to the fact that the contract had been repudiated by our people. In 1911 the net earnings of the company in the Hills' territory would be approximately \$2,500. In the second fiscal year which would end March 1, 1912, the net earnings were approximately \$5,500, and in the next fiscal year to March 1, 1913, the net earnings were approximately \$11,000. The second year after that the territory showed no increase. The profitable deal that we made in gasoline was sometime in 1911 or 1912. We bought the gasoline in the early part of the year and sold it in August and September. The earnings for the next year ending June was evidently about 25%. The Hills' contract [79] was not presented to the board until later in 1912. The company had earned by that time approximately \$70,00 per share. The dividends were declared in February, 1913. I was up here to see Mr. Hills in February, 1913. At that time the dividends of the company had been declared. I did not mention the fact to Mr. Hills that such dividends had been declared, that I have any recollection of.

(Testimony of O. H. Williams.)

I told Mr. Hills that Mr. Greenlees had sent me in a personal capacity for the purposes of closing up the transaction. I think it was at the Rainbow Hotel when I offered him the 10 shares of stock. Mr. Cooper and some other friend were present. I advised Mr. Hills that the board had refused to ratify the contract, and that Mr. Greenlees was willing to settle the matter, whatever it was, personally. I cannot recollect whether I mentioned to Mr. Hills that the 30 shares of stock had at that time earned dividends to the extent of \$2,100. I don't know what Mr. Greenlees' reason was for being willing to credit Mr. Hills \$1,000 for the stock, as he stated in his letter. I had no instructions that I recollect with reference to paying Hills \$700. Mr. Greenlees asked me to make some settlement with Mr. Hills and gave me the 10 shares of stock, which he told me to use. I was to make him a present of the 10 shares of stock, if he would settle the matter with Mr. Greenlees. The matter didn't get very far. He said he wouldn't consider it and the matter was dropped there. Greenlees told me to settle the difficulty for the 10 shares. If Hills had been done any injustice by the contract being repudiated by the Mutual Oil Company, he was willing, as a personal matter, to shoulder the burden and give Mr. Hills the stock for what injuries that might have been done him. I did not tell Mr. Hills that I was to donate the 10 shares in settlement of the balance due on his salary, five per cent earnings and the contract for stock. I did not at that time offer him stock for

(Testimony of O. H. Williams.)

either of these notes. The 10 shares of stock were [80] not to be in settlement of the five per cent feature and the \$20.00 a month for six months. Mr. Greenlees had personally written to Mr. Hills assuming the personal responsibility. The 30 shares of stock were considered out of the proposition. The note was not a Mutual Oil Company note; it was in Mr. Greenlees possession. I got it from the bank and turned it over to Mr. Greenlees. I did not consider that I was giving away company property. The company had not given anything for it.

Practically all the correspondence handled out of the office was dictated by me. At the time I discovered the contract with reference to the five per cent of the net earnings, I assumed that Mr. Hills was working under that agreement. Mr. Hills worked along after I had knowledge of that contract for a considerable period of time. I was not instrumental in preventing the company from carrying out that contract with reference to the five per cent of the net earnings. I do not know as I protested against it. I talked with Mr. Russell about it being such an unusual contract. I don't know as I told him that the company ought not to stand for it. That it was up to the board. I wasn't taking the initiative in that. This matter of the Hills' contract was brought up in one meeting in 1912. It is not a fact that the Hills' contract would always be discussed by the directors after adjourning the directors' meeting. We had a full board of seven directors at that time. They did not take a vote on



(Testimony of O. H. Williams.)

it. They simply said they would not be bound by it. There never was any formal action of the board of directors on the contract. I am positive that there is no record concerning any action that any director ever took on the matter. I cannot recall writing any letters to Hills about this contract. There may have been, but I have no recollection of it. I never notified Mr. Hills about the matter except personally when I was out here. I told him that I knew about the contract and that the board of directors would not [81] ratify it. The members of the board had expressed their opinion individually and said they would not ratify it. The only authority I had to tell him that they would not ratify the contract was their action in that meeting. The contract was never discussed but once at the directors' meetings, and there was no action taken then except simply discussing it. The reason of the company for repudiating the contract was not because the business turned out better than expected, but because they considered that they didn't have any right to do it. The matter always talked of was whether the directors had a right to give away the earnings of the company. When I told Hills in my letter that as soon as the net earnings would justify it we would increase his salary, I meant that we had always been willing to increase the salaries of our employees as long as the business would justify it. It was my idea in July, that Hills' compensation should be determined according to the net profits. I did not raise

(Testimony of O. H. Williams.)

his salary in 1912 or 1913 when the business showed profits. In the letter I wrote him I meant that I would raise his salary from time to time as the business in the territory grew and the profits would justify it. It was made with good intentions. I was not merely jollyng the fellow along. It is the only contract that the company ever repudiated as far as I know. I do not know whether Mr. Hills was notified of the declaration of the dividends or that he first learned of the accrual of the dividends when he went down to Kansas, 1914. He was credited with the amount of his dividends, but it wasn't an even amount. It didn't equal \$100, which was the par value of the preferred stock.

Redirect Examination by Mr. BISHOP.

The Hills contract was discussed by each one of the directors at the regular meetings of the directors of the Mutual Oil Company in 1912. It was discussed before adjournment of the meeting. Except Mr. Greenlees, not one of the directors was [82] in favor of ratifying it. Mr. Greenlees took part in the discussion. The board of directors instructed him to take it up with Mr. Hills and inform him that the board would not ratify the contract.

**Deposition of Junius Underwood, for Defendant.**

The deposition of JUNIUS UNDERWOOD, taken July 29, 1915, was read in evidence on behalf of the defendant, in which the witness testified in substance as follows:

I have resided in Lawrence, Kansas, forty-seven years, being in the clothing, feed and grain business.

(Deposition of Junius Underwood.)

I was one of the charter members of the Mutual Oil Company when it was organized in 1909. I have been a stockholder and director ever since. I have been vice-president since 1914. J. R. Greenlees was president of the corporation at the time of its inception. He continued to be president until June 30, 1914. He was also a director. The company first commenced to transact business some time in January, 1910, at the time Mr. Williams was appointed secretary. Prior to his appointment, the corporation had not done any business as a corporation. The board of directors met as a board about once a month later. I don't think that I have ever missed a meeting of the board of directors since its organization. I have met the plaintiff, Mr. Hills. It was when he and his attorney were here from Montana something like a year and one-half ago. The first time that I ever saw Exhibit "A" was when I saw it yesterday in your office. That contract was never authorized by the Oil Company nor was Mr. Greenlees ever directed to execute it. It was never presented to the board of directors. It was never before the board or discussed by the board. Mr. Greenlees at no time as an individual or as president of the company ever presented this contract to the board of directors. I first learned that such a contract was in existence in the fall of 1912, after we moved into our new offices in the Beery [83] Building. I got my information from Mr. Greenlees, but I never saw the contract until

(Deposition of Junius Underwood.)

yesterday, July 28, 1915. When Mr. Hills was here in Lawrence with his attorney, it was at the annual stockholders' meeting. After we were doing business up in the Montana territory, Mr. Greenlees told us that he had employed Mr. Hills. I knew that his salary was \$120.00 per month. The board of directors never authorized Mr. Greenlees in any way to sell company stock and to take dividends upon the stock in payment, or to sell stock and take payment of the same in promissory notes. He wasn't authorized to sell any stock on that basis. I first saw the Hills' note for \$3,000, Exhibits "B" and "C," yesterday, July 28, 1915, in your office. Exhibits "A," "B," and "C" were never presented to the board of directors of the Mutual Oil Company. The board of directors never accepted Exhibits "B" and "C" in payment of any stock belonging to the company. I think in the fall of 1912, I had heard of these notes. To my knowledge Exhibits "A," "B" and "C" have never been in the possession of the Mutual Oil Company. They were in Mr. Greenlees' possession. He never presented them to the board of directors as being payment of stock sold to Mr. Hills. The first time I ever learned that Mr. Hills claimed to own any stock in this company and to pay for it by Exhibits "B" and "C" was when he and his attorney came before the annual meeting of the board of directors about one and one-half years ago. The first time I ever saw Exhibit "D" was yesterday, the 28th of July, 1915. That con-

(Deposition of Junius Underwood.)

tract was never presented to the board of directors by Mr. Greenlees nor was it ever in possession of the Mutual Oil Company. Mr. Greenlees had possession of it; I know it wasn't in possession of the Mutual Oil Company. In the fall of 1912, I learned from Mr. Greenlees that there was some such contract as Exhibit "D." Mr. Greenlees was never authorized in any way by the Mutual Oil Company to execute the contract [84] as shown by Exhibit "D." The matter was never up before the board.

Cross-examination by Mr. J. B. WILSON.

The Mutual Oil Company is an Arizona corporation with the charter granted in March, 1909. I was elected a director of the company at the time of its organization, I suppose. I was a charter member. I don't think we ever had a meeting of the subscribers of the stock prior to the issuing of the charter by the State of Arizona. Our first meeting, I think, was June 6, 1910. I was elected at the meeting of June 6, 1910. I was one of the charter members, and I suppose all charter members were the directors at the time. There wasn't an annual meeting until June 6, 1910. I don't think we, who were the original subscribers and charter members, had a meeting of the stockholders prior to the issuance of the charter. Mr. Greenlees was chosen president of the concern, June 6, 1910. I don't know who the officers were when the company was chartered, other than those who were elected June 6, 1910. My impression is that the charter

(Deposition of Junius Underwood.)

members were re-elected at the meeting on June 6, 1910. We had no official meeting before that time at least. I don't remember of the choice of any officers of this concern prior to June, 1910. I remember that Mr. Greenlees was the promoter of the proposition and Mr. Williams was the active secretary and manager of the company, but he wasn't regularly elected until June, 1910. I think I was one of the charter directors. There wasn't any official election of directors or officers until the meeting of June 6, 1910. We had subscribed stock and I guess Mr. Greenlees told me that he wanted me as a director of the company, and as I didn't object they put me in. I think Mr. Greenlees solicited the first subscription of the stock of this company. After March, 1909, during that season Mr. Greenlees went west and looked over the ground and took up some locations for sites. He went to Montana. [85] We talked over the purpose of his visit and he was to select sites for oil stations. It was the purpose of his trip to do all things necessary for the opening up of the State for the purpose of selling our products. I do not remember having any conversation with the other directors, Mr. Blair or any of the directors within two or three months after Mr. Greenlees returned, as to what he was up there for. I never had any communication from Mr. Greenlees while he was in Montana. I did not know that he was there in August, 1909, for the purpose of transacting business for the Mutual Oil Company. After he got back he told me about

(Deposition of Junius Underwood.)

selecting some sites in Montana. Before he went he discussed the subject of promotion, and that he was going west to locate sites for oil stations, but he did not mention Montana. It might have been California or some other point. I did not know that after his return from Montana that he carried on a large amount of correspondence for Mr. Hills, concerning this contract. I did not know that long prior to June, 1910, Mr. Greenlees, acting on behalf of the company, ordered a large number of tanks and other equipment for the Montana territory. I don't know who had charge of the money for the Mutual Oil Company from March, 1909, to June, 1910. Mr. Williams took charge in June, 1910. Prior to that, I suppose, Mr. Greenlees had charge of the funds, but I don't know; I kept no track of these funds paid into the corporation. I know in a general way that Mr. Williams after he became secretary in January, 1910, had charge of the receipts and disbursements and general supervision of the company. I never inquired what he was doing for the company at that time. The meeting of June 6, 1910, was for the election of directors. Mr. Williams told me to come. He was then secretary. I could not tell you how he had been elected secretary as I was not at the meeting. I only know that he was elected [86] secretary and general manager on June 6th. I don't know that Mr. Greenlees kept on attending to business for the company after Mr. Williams was elected. It was my idea that Mr. Williams had charge. He might

(Deposition of Junius Underwood.)

have conferred with Mr. Greenlees in regard to certain things, but I don't know of my own knowledge. I saw Mr. Greenlees from time to time throughout the year of 1910, and probably discussed with him in a general way the affairs of the company. He told me that he had employed a man by the name of Hills to manage the territory in Montana and that he was getting \$120.00 a month. I knew nothing about any other contract. I knew that Mr. Hills was hired on a salary to look after the business in Montana. It was all right with me as a director. Mr. Greenlees and Mr. Williams were steering things. Mr. Greenlees was elected president at the June meeting, 1910. I do not think he was given any other official position. It was not understood that he was performing the duties of general manager. The secretary, Mr. Williams, was authorized to act as general manager. Up to June, 1910, Mr. Greenlees had been selling stock of the company. Prior to June, 1910, there was no specifications as to how stock should be sold. They all paid cash for it. I paid cash for mine. I suppose the rest did. I don't know of any action taken by the board of directors directing how stock should be sold prior to June, 1910. I am not familiar with the by-laws of the company. I am a director now and have been since the organization of the company and have been at every directors' meeting. I don't recall the date of the meeting at which the by-laws were passed. I don't think there was any official meeting prior to June, 1910.



(Deposition of Junius Underwood.)

I never knew anything about those notes, Exhibits "B" and "C," prior to March, 1913. I think Mr. Russell told me about them. It was when we found that a note was up in the Lawrence National Bank as collateral. I do not know when it was placed [87] there. It was placed there by Mr. Greenlees, but I don't know whether it was on his own account or the company's account. I know when Mr. Russell found out about it, he told Mr. Williams to return it to Mr. Greenlees. I don't suppose that Mr. Russell would be ordering Mr. Greenlees to take down notes on his own personal account. It was in the fall of 1912, when I first knew about it. The matter was not discussed at the meeting of the board of directors. I did not know that this \$3,000 note, Exhibit "B," was the original note and had been renewed by the new note, Exhibit "C."

The matter of Hills' employment as manager of the Montana District was never discussed at a directors meeting, as to the terms of his employment. We knew that he had been appointed by Mr. Greenlees, but supposed he was hired on a salary. Along about June, 1912, we had meetings every thirty days. The question of Mr. Hills' contract and claim for thirty shares of stock and five per cent of the net earnings in addition to his salary was not discussed at a general meeting of the board of directors of May or June, 1912. I attended every meeting of the company. We heard about this contract thru Mr. Greenlees in the fall of 1912, thru

(Deposition of Junius Underwood.)

this note proposition coming up. It was not discussed at a regular board meeting. I learned of it individually from Mr. Greenlees, and I think I talked it over with some of the directors. It was not brought up or discussed at a meeting of the board of directors at all. I think all of the stockholders, other than Mr. Hills, paid cash for their stock. The money was paid when the stock was issued to them. I don't know that Mr. Hills sold stock for the company in the Montana District. I knew that a few shares were sold at various stations in the Montana District, but I do not know who sold it. The company did not repudiate any of the business transacted by Mr. Greenlees in the Montana territory that came before the [88] board of directors that I know anything about.

Redirect Examination by Mr. BISHOP.

All business matters came before the board of directors. The contracts and sites were approved by the board. Mr. Greenlees took the Great Falls site in his own name. After our June meeting in 1910, he conveyed the site by deed to the company. That was brought before the board of directors. All business has come before the board from the time the board of directors first met as a board. The charter provides that every business transaction has to be ratified by the board of directors. When Mr. Greenlees returned after purchasing the sites in Montana, he did not communicate with me in any way concerning any contract matter by Mr.

(Deposition of Junius Underwood.)

Hills. The first time I ascertained that there was such a contract was in the fall of 1912. This was also the first time I learned of the sale of any stock for notes. Mr. Russell, then vice-president of the company and acting president, told me about it in 1913. I think we had some conversation with some of the directors about the contract purported to have been made by Mr. Greenlees to Mr. Hills, but it never came before the board. In talking with the directors informally in regard to that contract, I did not find any of them in favor of it. When Mr. Greenlees first told me about it, I told him I would not favor it.

Recross-examination by Mr. WILSON.

As a director of the company up to June, 1910, I knew that Mr. Greenlees had charge of the business of equipping the stations in Montana, and that he was the promoter of the company and had come up there in interest of the company. The board of directors never took any action as a board at all on any phase of Mr. Greenlees' agreement with Mr. Hills. I never heard of this proposed contract until the fall or winter of 1912 thru any source at all.

[89]

**Deposition of Hugh Blair, for Defendant.**

The deposition of HUGH BLAIR, taken July 29, 1915, a witness on behalf of the defendant, was read in evidence. The witness testified in effect as follows:

I am an attorney at law and have lived at Law-

(Deposition of Hugh Blair.)

rence, Kansas, 31 years. I was one of the charter members of the Mutual Oil Company, and have been connected with that company as a director and stockholder since its organization. I was one of the first members of the board of directors. There was no business performed by the company that I know of outside of the selling of stock by Mr. Greenlees until June, 1910. It was just informal business. There was no formal organization of the company until June, 1910, nor any meetings of the board of directors prior to that time. Mr. Greenlees did sometimes come in and discuss the business of the company in my office and sometimes in his office. He would tell us how the company was getting along. I don't remember any routine business until Mr. Williams was made secretary and manager. The business of the company commenced in an official way when the regular board of directors was elected in June, 1910. On that occasion Mr. Greenlees presented certain matters to the board with reference to the purchase of sites and the action of himself and Mr. Williams in purchasing equipment which was discussed and confirmed.

I first became acquainted with Mr. Hills when I met him and his attorney at the annual meeting in 1914. Exhibit "A" was never presented to the directors as a board. I had heard the contract talked about. I think Mr. Williams mentioned it informally at one of our meetings. I don't know who had possession of it. The company was never in possession of this contract to my knowledge. It

(Deposition of Hugh Blair.)

was never in the possession of the company by authority of the board of directors. The board never authorized Mr. Greenlees to enter into a contract of that character. [90] The board of directors never authorized Mr. Greenlees to sell stock and receive payment therefor from the dividends accruing from the stock; nor did they ever authorize stock to be sold by taking in payment therefor the promissory notes of individuals. The stock was sold for cash at par without any discount or commission to anyone. Mr. Greenlees never brought before the board of directors the question of selling stock on time to anyone and taking in payment therefor promissory notes to run until the dividends paid for the stock.

The first time I ever saw the contract, Exhibit "A," was in your office yesterday. Yesterday I saw Exhibits "B" and "C" for the first time. These exhibits were never presented to the board of directors for approval or rejection. I remember these notes being discussed informally at one of our meetings, but the notes were not presented. The matter of the contract and notes was first brought up by either Mr. Russell or Mr. Williams. Mr. Greenlees never discussed it at a board meeting of my knowledge. None of the Exhibits "A," "B," or "C" were ever exhibited at a meeting of the board or the terms discussed. Exhibit "D" which I saw for the first time yesterday was never presented to the board of directors. I learned about it at the same time I heard about the notes. Mr. Greenlees never presented either of the Exhibits "A," "B,"

(Deposition of Hugh Blair.)

“C” or “D” to the board of directors for approval or rejection. I never discussed these various documents or proposed contract with Mr. Hills before the board. The board of directors at no time authorized or directed Exhibits “B” and “C” to be placed as collateral security for any indebtedness of the company, nor were they so placed with the knowledge or consent of the board of directors. The contracts and notes were never in the possession of the company to my knowledge. Mr. Williams might have had them, but I have no knowledge of them ever being exhibited at a meeting of the board of directors. [91]

I was one of the incorporators of the company and was one of the first board of directors and have continued to be a director ever since. So far as I know, I have attended every meeting of the board. I have no recollection of missing a meeting. I also took an active part in selling stock. I sold about \$10,000 worth of the stock at par, and for cash only. I never offered to take paper from anybody and nobody ever offered to buy stock on time. I do not know of the officers or directors having ever been authorized to sell stock on time or taking payment in promissory notes for the stock to be paid by dividends upon the stock so sold. The board of directors had never given authority to any person to dispose of stock on such terms.

Cross-examination by Mr. WILSON.

I cannot recall any meeting of the board of incorporators or the board of directors at any time

(Deposition of Hugh Blair.)

in the year 1909. It is my opinion that there was no regularly called formal meeting. We directors did discuss the affairs of the company from time to time and talked about it when we happened to meet each other. I took but little interest and had but little knowledge of the company before Mr. Williams took up the affairs.

Mr. Greenlees did not tell me he was going to Montana before he went, but after he had been there I met him one day and he told me that he had been to Montana, to open up the territory there. He told me he was going to have a station at Great Falls and one at Missoula. I knew right after January, 1910, that the Montana territory had been opened up and stations placed in the Great Falls District. I knew that these things were going on, but before the June meeting I did not know to what extent they had been accomplished.

Mr. Williams opened his office in January, 1910. He was nominally the secretary, but not regularly elected until June, 1910. Mr. Greenlees, I think, mentioned Williams and [92] asked the rest of us what we thought about it, and we sanctioned the hiring of Mr. Williams. Mr. Greenlees consulted us about it. It was my understanding that Mr. Williams was to take charge of the detailed business management of the company in January, and his position was to be ratified in June when the board met. Up to that time I had no knowledge of the contract between Mr. Greenlees and Mr. Hills. When he returned from Montana he told me he had

(Deposition of Hugh Blair.)

made some arrangements with Mr. Hills. I thought it was simply a matter of salary. To the best of my recollection I first learned about the execution of the notes, Exhibits, "B" and "C," at a directors' meeting after we had really ended our formal business of the board. Mr. Williams brought the matter up. I never knew that the note had been placed as collateral for the Mutual Oil Company with the Lawrence National Bank. I think Mr. Williams when he found the note was placed in the bank asked us about it. I don't remember Mr. Williams or anyone else ever saying anything about the renewal of this note in July, 1911. Mr. Williams was the secretary and manager at that time. He was the most active man in the company.

I remember the matter of the company intending to reduce Mr. Hills' salary from \$120 to \$100 a month coming up in the directors' meeting. It is my recollection that they authorized the manager to notify Mr. Hills of the reduction. I do not recall that Mr. Williams ever told the directors anything about Mr. Hills' reply to the company on the matter of reduction of salary. The fact is that this is the first I ever heard of it. I knew there was dissatisfaction. I know we discussed the question of his not earning the salary he was getting and we thought it ought to be cut down, and Mr. Williams gave his reason for it. I was under the impression that it had been cut down. The management of the business to July, 1910, was left very largely to Mr. Greenlees and Mr. Williams. Up [93] to Jan-



(Deposition of Hugh Blair.)

uary, 1910, I don't think that Mr. Greenlees took any important steps without consulting us about it. I first heard about the notes at the meeting in 1912.

Q. Now, has the board of directors of the Mutual Oil Company ever repudiated any of the things done by Mr. Greenlees while he was acting as manager of the company?

A. We had heard of this contract with Mr. Hills and asked him about it, and he told us about it, and we absolutely refused to ratify it so he never asked the board to ratify it.

Q. Did you pass a formal resolution refusing to ratify it?

A. No, sir; we discouraged Mr. Greenlees so much when he mentioned it to us informally that the matter was never brought up before the board.

Q. Now, in June, 1910, at this first meeting of the board of directors, did Mr. Greenlees make a report of the business he had transacted for the company prior to that time?

A. He made a verbal report, he did not make a written report to my knowledge.

Q. Did the company at that time or later ever take up any action in the way of repudiating or ratifying in the things that Mr. Greenlees had done prior to that?

A. I have no recollection of any action being taken on any of his matters.

Q. The company accepted the profits on the business he started in Montana?

(Deposition of Hugh Blair.)

A. We accepted the bad debts that were made there, too.

I knew that Mr. Hills was acting as resident agent of the company, and I supposed that was as far as it went just as Mr. Russell was in Fremont, Nebraska, and Mr. Coleman in Superior, Nebraska, the board certainly never gave him more authority than those men. He did not have as many little stations. I don't think there are as many stations in Montana as in Nebraska. [94]

I have no recollection of a bond furnished by Mr. Hills being presented by anyone to the board of directors. We may have taken up the question of a surety. I presume I knew about Mr. Hills furnishing a bond of \$5,000 at the time. I have no recollection of the exact time or occasion. I presumed we authorized it and paid for it. I have no recollection of any formal meeting of the stockholders or directors from March, 1909, to June, 1910. During that period we transacted the business by personal conferences and in an informal manner.

Redirect Examination by Mr. BISHOP.

Our company requires a bond of every employee who handles money or merchandise. Up to the time Mr. Williams was appointed, the oil company did no business to amount to anything. It never had an office before that except in Mr. Greenlees private office. The meetings up to June, 1910, were purely informal affairs.

**Deposition of J. B. Russell, for Defendant.**

The deposition of J. B. RUSSELL, a witness on behalf of the defendant, taken July 29th, 1915, was read in evidence. [95]

The witness testified in effect as follows:

I became a stockholder in November or December, 1909. I was not a stockholder when the company was organized. At the first annual meeting in June, 1910, I was elected a director and vice-president. I am still a director. I held the position as vice-president until June, 1913, and then became president. In the absence of Mr. Greenlees, as vice-president I frequently exercised the position of president.

Exhibit "A" was never presented to the board of directors for approval, ratification or rejection, to my knowledge. I first saw Exhibit "A" some time during the year 1912. Mr. Williams dug it up in the papers and showed it to me. The notes, Exhibits "B" and "C," were never brought up before the board of directors for approval or rejection. Mr. Williams told me that he had found that note Exhibit "B" in the bank and had renewed it. I requested Mr. Williams to withdraw that note and return it to Mr. Greenlees. I think that was in July, 1911. That was when he mentioned it to me and told me that he had renewed it. The renewal of that note was not brought up before the board of directors to my knowledge. I know of no authorization by the directors for putting this note up as security for any note of the company. The fact that it had been put

(Deposition of J. B. Russell.)

up as collateral security was never put before the board. I do not know what became of this Exhibit "B" after I told Mr. Williams to withdraw it and return it to Mr. Greenlees. I supposed he had done as I told him. No authority was ever given to any member of the board or any person to sell stock of the Mutual Oil Company upon credit or to receive in payment for the same dividends accruing from the stock thus sold. Mr. Greenlees was never given authority to sell stock of the company and receive as payment for same the dividends from the stock thus sold or receive in payment promissory notes. [96] No stock has ever been sold that way to my knowledge. I never knew until yesterday of the existence of Exhibit "D." I did not know of the existence of such a document prior to that time only the little memorandum I mentioned before. I never knew that subsequent to the date of Exhibit "A." Mr. Hills had forwarded Exhibit "D" to the Mutual Oil Company for execution. I heard some talk that he had sent a contract to Mr. Greenlees. Mr. Greenlees did not present Exhibit "D" to the members of the board for ratification or rejection. While acting as vice-president the competency of Mr. Hills was discussed before the board of directors. The objections urged against him were that he was not careful enough about his credits and often went contrary to instructions.

Cross-examination by Mr. WILSON.

There was no meeting of the board of directors that I know of called until June, 1910. I never say any

(Deposition of J. B. Russell.)

record of any meeting before then. I know that long prior to June, 1910, Mr. Greenlees and Mr. Williams were carrying on a vast amount of business for the company in Montana and Nebraska. I was in rather close touch with the company from the fall of 1909. I knew a number of stations had been installed around Great Falls prior to June, 1910; and that the business had been done by Mr. Greenlees and Mr. Williams. Mr. Williams didn't do any of this work until June, 1910. Prior to that it was Mr. Greenlees but he always consulted the rest of us. I was not on the board but I was in close touch with him. The Montana work was not done entirely by Mr. Greenlees. I was consulted about the stuff that was shipped up there and I think the rest of the stockholders were too. After Mr. Greenlees had been to Montana to open up this territory, he told me what had been done there. As I remember [97] it the matter was referred to the stockholders and we all consulted about it individually as we met around. We had no formal meeting. I sold stock as much before I was director as later. Mr. Greenlees was the promoter of the company. I suppose he was placed on the application for charter as President of the company. I remained president until June, 1914. Prior to my election the company did not have any vice-president. It was after Mr. Williams had told me he found the note in the Lawrence National Bank and renewed it that I first learned of these exhibits "B" and "C." He told me that he had found a \$3,000 note at the Lawrence National

(Deposition of J. B. Russell.)

Bank and that when the note became due he was requested to have it renewed and he had it renewed. I think the note was given for eighteen months and run out July, 1911. It was soon after that he called my attention to it. Mr. Greenlees was away and I requested him to take that note and return it to Mr. Greenlees. I was acting as president at that time and as president gave those orders, and he told me he carried them out. I took the authority whether I had it or not. The only time the matter ever came up before the board of directors was at the time I saw the memorandum. The matter was mentioned at one of the meetings either at the beginning or at the close of the meeting. I suggested that the Mutual Oil Company had nothing to do with that matter. I said that it was up to Mr. Greenlees and Mr. Greenlees admitted that it was. We took no action on it as a board, but discussed it in July, 1912, about a year after the note was renewed. That was the only time it was ever mentioned in a directors' meeting. I talked personally about it with some of the directors. I talked about it with Mr. Williams. I was in the office with him at the time. I don't think I ever saw any letter from Mr. Hills in respect to the reduction of salary. I know that he had been notified that his salary had been lowered \$20 a month, but I don't recall that I ever saw a letter in answer to that. I cannot remember whether [98] I ever saw the particular bond that Mr. Hills gave. Every employee that handles money or stock

(Testimony of O. H. Williams.)

is compelled to give a bond. I know that every bond has an application. I don't know whether I saw that particular one.

**Testimony of O. H. Williams, for Defendant  
(Recalled).**

Redirect Examination by Mr. HURD.

O. H. WILLIAMS, recalled for further cross-examination, testified as follows:

I was in charge of the office on the 20th of March, 1910, and subsequent dates. I presume I received a copy of an application for a bond in a surety company for Mr. Hills. I subsequently forwarded that application of the company and paid the premium. All employees were placed under bonds. The application was filled out by Mr. Hills. It was mailed to me with the answer he had made to the bonding company. I evidently signed a declaration on behalf of the Mutual Oil Company letting it go forward with the application. When the application went thru the office, question 19, asking do you owe your employer anything and if so how much and on what account and when due, was answered "renewal note for \$3,000," and the answer to question 23 as to the description and value of your personal property was answered "30 shares of Mutual Oil Company Stock," and so forth. I evidently had knowledge of the facts stated in the application at the time of its date. I cannot recall at all at this time what I filled in there. I saw this blank at the time it was filled out and all the declarations contained in it.

DEFENDANT RESTS.

**Testimony of A. M. Embrey, for Plaintiff (in Rebuttal).**

A. M. EMBREY, called as a witness on behalf of the plaintiff in rebuttal, testified in substance as follows:

Direct Examination by Mr. HURD.

I am acquainted with the plaintiff, H. G. Hills, and likewise with O. H. Williams. I recall having seen Mr. Williams and Mr. Hills at the Rainbow Hotel in the summer of 1912. I also recall [99] the fact that one Cooper who was in the employ of the Mutual Oil Company was likewise present. We were all in the same room at the Rainbow Hotel. The meeting was in the latter part of the summer. Mr. Hills and I entered the room at the same time and we left the room at the same time. Mr. Hills and Mr. Williams had a conversation in the room with reference to some oil stock. Mr. Williams said he was representing the Mutual Oil Company. There was nothing said at that time by him as to the fact that he was representing Mr. Greenlees. There was nothing said in that conversation about 10 shares of stock delivered to Mr. Greenlees.

CASE CLOSED. [100]

The foregoing is presented as a statement of the evidence taken at the trial of said cause.

S. D. BISHOP,

J.W. CHURCH, and

FLETCHER MADDOX,

Solicitors for Defendant.

Service of above statement of the evidence is



acknowledged and copy received this 31st day of May, 1917, and we hereby consent that the same be settled as a statement of the evidence.

FREEMAN & THELEN and  
NORRIS & HURD,

Solicitors for Plaintiff.

The foregoing statement of the evidence contains all of the testimony, oral and documentary introduced at the trial of said cause and is approved this 9th day of June, 1917.

BOURQUIN,  
United States District Judge for the District of Montana.

Filed June 9, 1917. Geo. W. Sproule, Clerk. By  
C. R. Garlow, Deputy. [101]

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Thereafter, on March 20, 1917, Petition for Appeal was duly filed herein, in the words and figures following, to wit:

[Title of Court and Cause.]

**Petition for Appeal.**

To the Honorable the Judges of the District Court of the United States, Ninth Circuit, District of Montana:

The above-named defendant, a corporation, feeling itself aggrieved by the decree made and entered in this cause on the 20th day of March, 1917, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon the grounds specified in the assignment of errors, which is filed herewith, and said defendant

prays that its appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, and your petitioner further prays that the proper order touching the security to be required of it to perfect its said appeal be made, and your petitioner shall ever pray, etc.

I. W. CHURCH,  
FLETCHER MADDIX and  
S. D. BISHOP,  
Solicitors for Defendant.

Filed Mar. 20, 1917. Geo. W. Sproule, Clerk.  
[102]

Thereafter, on March 20, 1917, assignment of errors was duly filed herein, in the words and figures following, to wit: [103]

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[Title of Court and Cause.]

**Assignments of Error.**

Comes now the above-named defendant on this 20 day of March, 1917, and says: That the decree entered in the above cause on the 17th day of March, 1917, is erroneous and unjust to the defendant, and assigns and specifies the following errors committed by the Court in the rendition and entry thereof:

1. The Court erred in holding and deciding that the plaintiff's amended bill of complaint stated a

cause of action for equitable relief.

2. The Court erred in holding and deciding that the plaintiff was entitled to a specific performance of the contract set forth in his amended bill of complaint.

3. The Court erred in holding and deciding upon the full hearing of the case that the plaintiff was entitled to the equitable relief of specific performance upon the evidence taken and considered upon the trial of said cause.

4. The Court erred in holding and deciding that the contract set out in plaintiff's bill was a completed agreement and not a mere preliminary negotiation.

5. The Court erred in holding and deciding that the contract, or preliminary memorandum was intended by the parties to take immediate effect.

6. The Court erred in holding and deciding that the reduction of the contract in question to writing and its approval by the defendant's directors, had been waived. [104]

7. The Court erred in holding and deciding that the reduction of the contract in question to writing was not a condition precedent to its validity.

8. The Court erred in holding and deciding that the reduction of the contract in question to writing as a condition precedent to its mutuality had been waived by the defendant.

9. The Court erred in holding and deciding that the contract set out in plaintiff's bill had been ratified by the defendant's board of directors by acquiescence with knowledge.

10. The Court erred in holding and deciding that

the contract set out in plaintiff's bill had been ratified by the defendant's board of directors by silence or by receiving the benefits with knowledge.

11. The Court erred in holding and deciding that the defendant was estopped to repudiate the alleged contract after knowledge thereof by its board of directors.

12. The Court erred in holding and deciding that the contract set out in plaintiff's bill was not *ultra vires*.

13. The Court erred in deciding the present action in favor of the plaintiff and against the defendant, and in ordering and entering judgment herein in favor of the plaintiff and against the defendant.

14. The Court erred in refusing to order and have entered judgment herein in favor of the defendant and against the plaintiff.

WHEREFORE, the said defendant prays that said decree be reversed and the said District Court be instructed and ordered to enter such decree as the Circuit Court of Appeals of the United States for the Ninth Circuit shall deem meet and proper on the record.

I. W. CHURCH,  
FLETCHER MADDOX and  
S. D. BISHOP,  
Solicitors for Defendant.

Filed March 20, 1917. Geo. W. Sproule, Clerk.

Thereafter, on March 20, 1917, Order Allowing Appeal and Fixing Bond was duly entered herein, as follows, to wit:

[Title of Court and Cause.]

**Order Allowing Appeal and Fixing Bond.**

At a stated term, to wit, the October Term, A. D. 1916, of the District Court of the United States in and for the District of Montana, held at the courtroom in the city of Great Falls, State of Montana, on the 20th day of March, 1917; present, the Honorable GEO. M. BOURQUIN, District Judge.

On reading and filing the petition of the defendant herein, for an order allowing appeal, and the assignment of errors herein made and signed by the said defendant, on motion of Messrs. I. W. Church, S. D. Bishop and Fletcher Maddox, counsel for said defendant and appellant, Messrs. Norris & Hurd and Freeman & Thelen, counsel for respondent, being present.

It is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at the said city of San Francisco, and the State of California, from the final decree heretofore made, entered and filed herein on the 17th day of March, 1917, be and the same is hereby allowed; and that a transcript of the record and all proceedings had in said cause be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the defendant deposit with the clerk of this court a certificate or certifi-

cates of stock in due form, signed and attested in the usual manner, for thirty (30) shares of the common stock of the capital stock of said defendant, Mutual Oil Company, issued to and in favor of the plaintiff, H. G. Hills; and

It is further ordered that the amount of the security [106] on appeal herein to be furnished by the said defendant, be and the same is hereby fixed at the sum of Three Hundred Dollars (\$300) and that upon the making and filing with the clerk of this court of a good and sufficient bond in said sum by the said defendant, all further proceedings be superseded and stayed until the final determination of said appeal by the said United States Circuit Court of Appeals, and until the further order of this court.

BOURQUIN,  
Judge.

Filed and entered March 20, 1917. Geo. W. Sproule, Clerk. [107]

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Thereafter, on March 20, 1917, bond on appeal was duly filed herein as follows, to wit:

[Title of Court and Cause.]

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS: That we, Mutual Oil Company, a corporation, as principal, and F. A. Bronson and Grace A. Bronson, as sureties, are held and firmly bound unto the above-named H. G. Hills in the sum of Three Hundred Dollars for the payment of which, well and truly to be made, we bind ourselves, jointly and severally,

and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 19th day of March, 1917.

Whereas, the above-named defendant has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a decree rendered in the above-entitled cause in the District Court of the United States, Ninth Circuit, District of Montana, on the 17th day of March, 1917.

And whereas the above-named defendant has deposited with the clerk of this court a certificate for thirty (30) shares of the common stock of the said defendant to be held by said clerk, pending the final decision of said appeal.

Now, therefore, the condition of this obligation is such that if the above-named defendant, Mutual Oil Company, a corporation, shall prosecute said appeal to effect and shall answer all damages and costs that may be awarded against said defendant corporation if it fails to make good its plea, then the above obligation is to be void; otherwise to remain in full force and virtue.

MUTUAL OIL COMPANY.

J. E. HULT, Mgr.

F. A. BRONSON.

GRACE J. BRONSON. [108]

State of Montana,  
County of Cascade—ss.

F. A. Bronson and Grace J. Bronson, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn each for himself

says: that he is a resident and freeholder within the county of Cascade, State of Montana, and is worth the sum specified in the foregoing undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

F. A. BRONSON.

GRACE J. BRONSON.

Subscribed and sworn to before me this 19th day of March, 1917.

[Seal]

T. F. MYERS,

Notary Public for the State of Montana, Residing at  
Great Falls.

My commission expires Feb. 1, 1918.

The foregoing undertaking on appeal is hereby approved.

Great Falls, Montana, March 20, 1917.

BOURQUIN,

Judge.

Filed March 20, 1917. Geo. W. Sproule, Clerk.

[109]

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That on June 9, 1917, a citation was duly issued herein, which said original citation is hereto annexed and is in the words and figures following, to wit: [110]



*In the District Court of the United States, Ninth  
Circuit, District of Montana.*

H. G. HILLS,

Plaintiff,

vs.

MUTUAL OIL COMPANY, a Corporation,

Defendant.

**Citation.**

United States of America,

District of Montana,—ss.

The President of the United States to H. G. Hills,  
and to Messrs. Freeman & Thelen and Norris &  
Hurd, His Solicitors:

You are herewith cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, within 30 days from the date hereof, pursuant to an appeal filed in the office of the clerk of the District Court of the United States, Ninth Circuit, in and for the District of Montana, wherein H. G. Hills is plaintiff and respondent, and the Mutual Oil Company, a corporation, is defendant and appellant, to show cause, if any there be, why the judgment and decree in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable GEO. M. BOURQUIN,  
Judge of the District Court of the United States for

the District of [111] Montana, this 9 day of June,  
A. D. 1917.

GEO. M. BOURQUIN,  
Judge of the District Court of the United States, for  
the District of Montana.

Personal service of the foregoing citation upon us  
and receipt of a copy thereof this 11 day of June,  
1917, is hereby acknowledged.

NORRIS & HURD,  
FREEMAN & THELEN,  
Solicitors for Plaintiff. [112]

[Endorsed]: No. 43. In the District Court of the  
United States, Ninth Circuit, District of Montana.  
H. G. Hills, Plaintiff, vs. Mutual Oil Company, a  
Corporation, Defendant. Citation. Filed June  
12th, 1917. Geo. W. Sproule, Clerk. By C. R. Gar-  
low, Deputy. [113]

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That on the 7th day of June, 1917, praecipe for  
transcript was duly filed herein, in the words and  
figures following, to wit:

[Title of Court and Cause.]

**Praecipe for Transcript on Appeal.**

To the Clerk of Said Court:

You will please incorporate into the transcript on  
appeal in the above-entitled action the following por-  
tions of the record in said cause, to wit:

1. Plaintiff's amended complaint.
2. Defendant's answer to the amended complaint.
3. Plaintiff's reply to defendant's answer.
4. The statement of the evidence as agreed to by  
counsel and settled by the Judge.

5. The opinion of the Court rendered in said cause.
6. The final decree rendered and entered therein.
7. The petition on appeal.
8. The order allowing the appeal.
9. The assignment of errors.
10. The bond on appeal.
11. The citation on appeal and proof of service.
12. The clerk's certificate to transcript of record and the names and addresses of the solicitors of record.

S. D. BISHOP,  
I. W. CHURCH and  
FLETCHER MADDOX,  
Solicitors for Defendant.

Great Falls, Mont., June 6, 1917.

Service upon us this 6th day of June, 1917, of a copy of the foregoing praecipe indicating portions of the record to be incorporated in the transcript on appeal is hereby acknowledged.

FREEMAN & THELEN,  
NORRIS & HURD,  
Solicitors for Plaintiff.

Filed June 7, 1917. Geo. W. Sproule, Clerk.  
[114]

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**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United

States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 115 pages, numbered consecutively from 1 to 115, inclusive, is a full, true, and correct transcript of the pleadings, orders, opinion and decree, and all other proceedings had in said cause required to be incorporated in the transcript on appeal therein by appellant's praecipe therefor, including a copy of said praecipe, and of the whole thereof, as appears from the original records and files of said court in my custody as such clerk; and I further certify that I have annexed to said transcript and included within said paging the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Forty-seven and 15/100 Dollars, (\$47.15) and have been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 12th day of June, 1917.

[Seal]

GEO. W. SPROULE,  
Clerk. [115]

[Endorsed]: No. 3010. United States Circuit Court of Appeals for the Ninth Circuit. Mutual Oil Company, a Corporation, Appellant, vs. H. G. Hills, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed June 15, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

